

## CAU Comments on Public and Aboriginal Engagement REGDOC-3.2.2

### Preface

The preface appears to be a bit confusing – not so much the content, but the flow of information. For example, it makes reference to 8 other documents, including acts, regulations, and policies and guidelines, but doesn't necessarily put them into context (for example does the CNSC codification state the agency's commitment, while the document itself provides the "how to"?). It also mentions in at least 3 separate places who the intended audience is (licensees). Overall it seems a bit disjointed and difficult to follow. Another minor point: should it refer to licensees **and** proponents? And should the title of the document be more descriptive, along the line of MPMO's "guide to proponents"?

The second last paragraph seems to say much the same thing as the "Important Note" at the end of the Preface, i.e. this document is "part of the licensing basis for a regulated facility or activity." Also, what is meant by that phrase: does it need more explanation, or will it be clear to licensees?

### Background

P. 2 – we refer to the duty to consult, and where appropriate, accommodate. To remain consistent with other documentation it's best that these two concepts are not de-linked

p. 3 - the Crown may delegate procedural aspects, not procedurally delegate.

p.3 - In the Guideline for Federal Officials it indicates that "...the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights." The CNSC document goes further and refers to title, i.e.: "...activities that could adversely impact potential or established Aboriginal and/or treaty rights and related interests, including *Aboriginal title*." I assume this reflects the decision in the Roger William case. Just wondering if this will be consistent with the revised AANDC guidelines for federal officials as well.

p. 3, table 1 – this table makes it appear as though there are only two types of scenarios, more of a spectrum should be evident

### Licensee Requirements for Aboriginal Engagement

p.4 - in the first paragraph under the heading Guidance, the acronym EA is used for the first time, but the term Environmental Assessment is not included. It's probably obvious to licensees what EA means, but the full term should probably be included.

p. 5 – 3.2.1 – the role of the CNSC in identification of groups and rationale is not clear. Does the CNSC provide an advisory function to proponents? Is participant funding available?

p.5 - in the section on "Identification of Aboriginal groups and rationale" would it be helpful to mention Consultation Protocols as a consideration? I note that protocols are referred to in Appendix A as well.

p. 6 – perhaps the list of potential activities could begin with “proposals that impact an Aboriginal group’s ability to... such as (insert the other examples)

p.7 - It's interesting to note the statement that "The CNSC may participate in licensees’ Aboriginal engagement activities, where appropriate ." This is certainly positive. Will this be considered part of the formal duty to consult?

p. 8 2<sup>nd</sup> para – This information more clearly indicates the role of the CNSC, perhaps it should be made clearer earlier on in the document.

P 13 – Other resources – most of this information is housed in ATRIS. See this link for further info <https://www.aadnc-aandc.gc.ca/eng/1100100014686/1100100014687>

Consultation Information Service – the information that is listed here under the bulleted list is information that is found in ATRIS. Officials and proponents are encouraged to go to ATRIS first, should there be a situation that additional expert advisement is required, that’s where the CIS comes in.

**We would suggest CNSC replace their ATRIS and CIS bullets/content on p. 13 with the following:**

The Consultation and Accommodation Unit of Aboriginal Affairs and Northern Development Canada has developed the **Aboriginal and Treaty Rights Information System (ATRIS)** to disseminate relevant information about Aboriginal groups in Canada and the Section 35 rights those groups exercise or assert. ATRIS is a web-based tool that features an interactive map and corresponding narrative content to help users identify Aboriginal communities in proximity to a given project area or whose potential or established Aboriginal or treaty rights may intersect with a project. Officials, proponents and others seeking to inform their Aboriginal consultations are encouraged to carry out their preliminary research within ATRIS.

ATRIS and its content are managed by the **Consultation Information Service (CIS)**. If you have questions about the system or the information within it, queries can be sent to the CIS at the following address: [cau-uca@aadnc-aandc.gc.ca](mailto:cau-uca@aadnc-aandc.gc.ca)



# Public and Aboriginal Engagement

## **Aboriginal Engagement**

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**DRAFT**



## Aboriginal Engagement

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This document can be viewed on the CNSC website at [nuclearsafety.gc.ca](http://nuclearsafety.gc.ca). To request a copy of the document in English or French, please contact:

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## Preface

This regulatory document is part of the CNSC's Public and Aboriginal Engagement series of regulatory documents, which also covers public information and disclosure. The full list of regulatory document series is included at the end of this document and can also be found on the [CNSC's website](#).

Regulatory document REGDOC-3.2.2, *Aboriginal Engagement*, sets out the requirements and guidance for licensees on Aboriginal engagement. As defined in the *Constitution Act, 1982*, references to Aboriginal groups and communities in this document include Indian, Inuit and Métis peoples of Canada. For the purposes of this document, "licensee" refers to new licence applicants and existing licensees, and "regulated facility or activity" refers to proposed or existing regulated facilities and activities. "CNSC" refers to CNSC staff and "the Commission" refers to the administrative tribunal.

While this document is intended to apply generally to regulated facilities and activities described in the *Class I Nuclear Facilities Regulations* and the *Uranium Mines and Mills Regulations*, it may not apply to all facilities and/or activities described by those regulations. As appropriate, the CNSC may also request information from licensees related to Aboriginal engagement for facilities and/or activities not described in the *Class I Nuclear Facilities Regulations* and the *Uranium Mines and Mills Regulations*.

This document is not a comprehensive guide on Aboriginal engagement, and it does not interpret treaties under section 35 of the *Constitution Act, 1982*, or replicate information provided in the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) or other environmental statutes or guidelines. Rather, REGDOC-3.2.2 provides procedural direction for licensees, in support of the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.

This document supersedes *Supplementary Information for Licensees: Aboriginal Consultation* (published in 2011). The requirements in this document are in addition to those found in RD/GD-99.3, *Public Information and Disclosure*, and are meant to ensure that potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title (an Aboriginal right to the exclusive use and occupation of land), are considered, as appropriate.

For further information on the CNSC's approach to Aboriginal consultation, refer to the external policy found in the *Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation*. The CNSC approach is informed by the guiding principles outlined in [Aboriginal Affairs and Northern Development Canada's !\[\]\(0b5e7e25e8775f7e7e80906ada4f0021\_img.jpg\) Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult](#).

REGDOC-3.2.2 is intended to form part of the licensing basis for a regulated facility or activity within the scope of the document.

Guidance contained in this document exists to inform the licensee, to elaborate further on requirements or to provide direction to licensees on how to meet requirements. It also provides more information about how CNSC staff evaluate specific problems or data during the review of licence applications. Licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements.

**Important note:** Where referenced in a licence either directly or indirectly (such as through licensee-referenced documents), this document is part of the licensing basis for a regulated facility or activity.

The licensing basis sets the boundary conditions for acceptable performance at a regulated facility or activity and establishes the basis for the CNSC's compliance program for that regulated facility or activity.

Where this document is part of the licensing basis, the word "shall" is used to express a requirement to be satisfied by the licensee or licence applicant. "Should" is used to express guidance or that which is advised. "May" is used to express an option or that which is advised or permissible within the limits of this regulatory document. "Can" is used to express possibility or capability.

Nothing contained in this document is to be construed as relieving any licensee from any other pertinent requirements. It is the licensee's responsibility to identify and comply with all applicable regulations and licence conditions.


## Table of Contents

<b>1.</b>	<b>Introduction.....</b>	<b>1</b>
1.1	Purpose.....	1
1.2	Scope.....	1
1.3	Relevant legislation.....	1
<b>2.</b>	<b>Background .....</b>	<b>2</b>
<b>3.</b>	<b>Licensee Requirements for Aboriginal Engagement.....</b>	<b>3</b>
3.1	Overview of Aboriginal engagement planning and reporting.....	4
3.2	Submission of Aboriginal engagement plan and report.....	4
3.2.1	Content of Aboriginal engagement plan and report.....	5
3.2.2	Canadian Nuclear Safety Commission activities following receipt of Aboriginal engagement plan and report.....	7
3.3	Management of changes .....	8
3.4	Aboriginal engagement section within the Commission Member Document .....	8
3.5	Keeping Aboriginal groups and the Canadian Nuclear Safety Commission informed after a Commission decision .....	9
3.6	Non-applicability or non-standard applicability .....	9
3.6.1	Non-applicability of Aboriginal engagement planning and reporting requirements .....	9
3.6.2	Canadian Nuclear Safety Commission requests for Aboriginal engagement plans and reports in cases of non-applicability.....	10
<b>Appendix A: Considerations for Aboriginal Engagement.....</b>		<b>11</b>
<b>Appendix B: Resources.....</b>		<b>13</b>
<b>References.....</b>		<b>15</b>
<b>Additional Information .....</b>		<b>16</b>

# Aboriginal Engagement

## 1. Introduction

### 1.1 Purpose

This document identifies requirements for Canadian Nuclear Safety Commission (CNSC) licensees, with respect to **Aboriginal engagement**. It also provides guidance and information on conducting Aboriginal engagement activities. 

### 1.2 Scope

This document sets out requirements and guidance for CNSC licensees on:

- Aboriginal engagement
- communication with the CNSC about Aboriginal engagement activities and issues

This document applies to regulated facilities and activities described in the *Class I Nuclear Facilities Regulations* and the *Uranium Mines and Mills Regulations*.

This document is not a comprehensive guide on Aboriginal engagement. It does not interpret treaties under section 35 of the *Constitution Act, 1982*, or replicate information provided in the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) or other environmental statutes or guidelines. Rather, this document provides procedural direction for CNSC licensees in support of the broader approach to Aboriginal consultation implemented by the CNSC in cooperation with federal departments and agencies.

### 1.3 Relevant legislation

The following provisions of the *Nuclear Safety and Control Act* (NSCA), regulations made under the NSCA and the *Constitution Act, 1982* are relevant to this document:

- paragraph 9(b) of the NSCA, which provides that “The objects of the Commission are (b) to disseminate objective scientific, technical and regulatory information to the public concerning the activities of the Commission and the effects, on the environment and on the health and safety of persons, of the development, production, possession and use referred to in paragraph (a).”
- subsection 3(1.1) of the *General Nuclear Safety and Control Regulations* (GNSCR), which provides that “The Commission or a designated officer authorized under paragraph 37(2)(c) of the Act, may require any other information that is necessary to enable the Commission or the designated officer to determine whether the applicant (a) is qualified to carry on the activity to be licensed; or (b) will, in carrying on that activity, make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.”
- paragraph 3(c)(i) of the *Uranium Mines and Mills Regulations* (UMMR), which provides that “An application for a licence in respect of a uranium mine or mill, other than a licence to





abandon, shall contain the following information in addition to the information required by section 3 of the *General Nuclear Safety and Control Regulations*:

- (c) in relation to the environment and waste management,
  - (i) the program to inform persons living in the vicinity of the mine or mill of the general nature and characteristics of the anticipated effects of the activity to be licensed on the environment and the health and safety of persons;”
- paragraph 8(a) of the UMMR, which provides that “An application for a licence to abandon a uranium mine or mill shall contain the following information in addition to the information required by sections 3 and 4 of the *General Nuclear Safety and Control Regulations*:
  - (a) the program to inform persons living in the vicinity of the site of the mine or mill of the general nature and characteristics of the anticipated effects of the abandonment on the environment and the health and safety of persons;”
- paragraph 3(j) of the *Class I Nuclear Facilities Regulations*, which provides that “An application for a licence in respect of a Class I nuclear facility, other than a licence to abandon, shall contain the following information in addition to the information required by section 3 of the *General Nuclear Safety and Control Regulations*:
  - (j) the proposed program to inform persons living in the vicinity of the site of the general nature and characteristics of the anticipated effects on the environment and the health and safety of persons that may result from the activity to be licensed;”
- section 35 of the *Constitution Act, 1982*, which provides that
  - “(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
  - (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
  - (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
  - (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.”

## 2. Background

The CNSC’s approach to Aboriginal consultation includes commitments to uphold the honour of the Crown, through relationship building and information sharing, as well as to meet the CNSC’s legal obligations under section 35 of the *Constitution Act, 1982*.

Since 2004, the Supreme Court of Canada (SCC) has held that the Crown (federal, provincial and territorial governments) has a duty to consult. The SCC has also held that the Crown has a duty to accommodate, where appropriate, when it contemplates conduct that might adversely impact potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title.  

The SCC has subsequently clarified responsibilities related to the duty to consult, noting that entities such as boards and tribunals, including the CNSC, also play a role in fulfilling the duty. The CNSC meets these responsibilities through Aboriginal consultation activities, and its approach is articulated in the *Codification of Current Practice: Canadian Nuclear Safety Commission (CNSC) Commitment to Aboriginal Consultation*. This document is available on the [CNSC’s website](#).

The SCC has also stated that the Crown may procedurally delegate aspects of the consultation process to third parties, such as licensees. The CNSC may rely on licensees for proposed measures to avoid, mitigate or offset adverse impacts to potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, and to accommodate these rights where appropriate.

In June 2014, the SCC granted Aboriginal title for the first time to a specific land area in Canada, and it clarified the application of provincial laws and regulatory regimes to Aboriginal title lands.

Licensees' Aboriginal engagement activities help determine if a regulated facility or activity could potentially impact rights and related interests, including Aboriginal title, and help inform the CNSC's approach to Aboriginal consultation activities.

The CNSC's Aboriginal consultation activities can vary for each regulated facility or activity. Table 1 depicts the consultation activity spectrum that the CNSC uses to consider the relevant factors for a specific regulated facility or activity, and to determine appropriate consultation activities.

**Table 1. Consultation activity spectrum**

<b>Potential for adverse impacts to Aboriginal and/or treaty rights and related interests, including Aboriginal title</b>	
<b>Unlikely to low potential for adverse impacts</b> <ul style="list-style-type: none"> <li>• provision of adequate notice</li> <li>• disclosure of relevant information</li> <li>• discussion of issues raised in response to notice</li> </ul>	<b>High potential for adverse impacts</b> <ul style="list-style-type: none"> <li>• exchange of information</li> <li>• correspondence</li> <li>• meetings</li> <li>• site visit</li> <li>• research</li> <li>• studies</li> <li>• opportunity to make submissions to the decision-maker</li> <li>• determination of accommodation, where appropriate: seek to adjust project, develop mitigating measures, consider changing proposed activity, attach terms and conditions to permit or authorization, consider rejecting a project, etc.</li> </ul>

Informed by Aboriginal Affairs and Northern Development Canada's Updated Guidelines for Federal Officials to Fulfill the Duty to Consult – March 2011.

### 3. Licensee Requirements for Aboriginal Engagement

When licensees propose regulated facilities or activities that could adversely impact potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, they shall engage with potentially impacted Aboriginal groups at a level commensurate with the

significance of the potential impact on those rights and related interests, including Aboriginal title.

For any regulated facility or activity that could adversely impact potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, licensees shall include an Aboriginal engagement plan and report within a project description or licence application. Refer to draft REGDOC-2.9.1, *Environmental Protection: Environmental Assessment*, for additional information on the requirements and guidance for the conduct of environmental assessments (EAs) under the NSCA and of EAs under the CEAA 2012.

### Guidance

It is essential that licensees submit accurate, complete information, as this helps the CNSC to ensure an adequate Aboriginal consultation process, to determine the appropriate level of Aboriginal consultation activities, and to carry out an effective and efficient EA and/or licensing review. These details are also critical to informing the Commission in its decision-making.

If licensees conduct Aboriginal engagement activities outside of the scope of this document or in support of due diligence, they are encouraged to share any relevant information with the CNSC, when available.

The CNSC will inform licensees in a timely manner if, during the EA or licensing process, it becomes aware of previously unidentified issues or impacts to potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, that could also be addressed through licensee Aboriginal engagement activities.

### 3.1 Overview of Aboriginal engagement planning and reporting

Licensees shall submit the following to the CNSC:

- an Aboriginal engagement plan and report, including a summary of any Aboriginal engagement activities conducted to date, and a proposed schedule for interim reporting to the CNSC
- a material change update
- an Aboriginal engagement section within their Commission Member Document (CMD)

Further information is provided in section 3.6.1, Non-applicability of Aboriginal engagement planning and reporting requirements.

### 3.2 Submission of Aboriginal engagement plan and report

Licensees shall submit an Aboriginal engagement plan and report, including a proposed schedule for interim reporting to the CNSC. The Aboriginal engagement plan and report shall be submitted:

- as part of a project description if an EA decision is sought separately from a licensing decision
- as part of a licence application if an EA decision and licensing decision is sought concurrently
- as part of a licence application if only a licensing decision is required

## Guidance

The Aboriginal engagement plan and report should include:

- a list of Aboriginal groups identified for engagement, and the methodology and rationale for identification
- a summary of Aboriginal engagement activities that may have already taken place, including:
  - information about meetings; i.e., date, attendees, and topics discussed
  - information specific to the regulated facility or activity that has been provided to Aboriginal groups
  - any issues that have been raised
  - any proposed mitigation measures
- a description of planned future engagement activities
- a proposed interim status reporting schedule

The following subsections provide licensees with guidance and factors to consider with respect to obtaining information that should be included in the Aboriginal engagement plan and report. These sections also elaborate on the activities of the CNSC after it receives this information.

### 3.2.1 Content of Aboriginal engagement plan and report

#### Guidance

##### *Identification of Aboriginal groups and rationale*

In the Aboriginal engagement plan and report, licensees should include a list of Aboriginal groups identified for engagement activities, and the rationale for identification.

Key factors to consider when determining which Aboriginal groups to engage include:

- historic or modern treaties in the region of the regulated facility or activity
- potential impacts to the health and safety of the public, the environment and any potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title
- proximity of the regulated facility or activity to Aboriginal communities
- Aboriginal community engagement protocols and agreements
- traditional territories
- traditional and current use of lands
- settled or ongoing land claims
- settled or ongoing litigation related to a potentially impacted group
- membership in a tribal council or Aboriginal umbrella group
- governance structure (i.e., confirming the names of elected or designated authorities who represent the Band and/or Aboriginal organization)


Appendix A contains a more extensive list of considerations that may assist in directing the scope and content of Aboriginal engagement activities.

Licensees are also encouraged to contact the CNSC for additional information about its approach to Aboriginal consultation activities.

Once contact is established with Aboriginal groups, licensees should ask the groups how they would like to be engaged, as preferences may vary by community. The CNSC encourages the


development of an engagement work plan that is reasonable to both parties. When engaging with Aboriginal groups, there may also be a need to address different linguistic, cultural, geographic or informational needs and to allow for a flexible approach to engagement. When developing an Aboriginal engagement work plan, licensees should consider the following:



- assignment of a consistent representative
- face-to-face meetings
- incorporation of a variety of engagement forums and techniques (e.g., letters, phone calls, presentations, working groups)
- schedules and workloads of the Aboriginal groups involved
- potential engagement protocol 
- translation of information into the native languages of the Aboriginal groups engaged, where appropriate
- communication with identified Aboriginal groups throughout the licensing period of the regulated facility or activity



Licensees should provide Aboriginal groups with:


- preliminary information on the nature and scope of the regulated facility or activity and its potential impact on the environment
- possible mitigation measures, such as involving  Aboriginal groups in the development, implementation and review of mitigation measures

### ***Summary of Aboriginal engagement activities to date***

Before submitting a licence application or project description, licensees should conduct Aboriginal engagement activities as early as possible if one or more of the following criteria apply:

- the proposal falls outside of the licensing basis, such as changes to the size of the footprint of a facility
- the proposal can result in changes to the environment
- the proposal may adversely impact an Aboriginal group's ability to practice its potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title

Early engagement provides Aboriginal groups with an opportunity to share information on local and Aboriginal traditional knowledge that helps to identify potential impacts from the regulated facility or activity on traditional land use, treaty rights, Aboriginal rights, and culturally important sites, including archeological sites.

In some instances during engagement, an Aboriginal group may request an additional study that falls outside of the initial scope of the regulated facility or activity  this may include traditional land use studies or archaeological assessments.

Licensees should document all Aboriginal engagement activities (e.g., letters, phone calls, meetings) conducted with Aboriginal groups in order to track issues and concerns raised as well as any steps taken to minimize impacts or to address issues. Any proposed mitigation measures or modifications – including any that occurred before submission of the project description and/or licence application – should be documented, in order to demonstrate how initial concerns of Aboriginal groups have been addressed and to show ongoing responsiveness.

Licensees should have a records management process in place to record Aboriginal engagement activities. Records management tools may include an engagement log that lists activities by date, time and individual/group, and an issues tracking table that identifies issues raised by groups and whether these have been addressed or remain outstanding.

Licensees are encouraged to provide all potentially useful information on Aboriginal engagement activities to the CNSC, including agreements with Aboriginal groups. Note that, pursuant to the [Access to Information Act](#) and the [Privacy Act](#), the CNSC is required to release certain information when requested by interested parties. Information provided to the CNSC that is to remain confidential must be provided to the Commission Secretary, under separate cover from a project description or licence application, with a request that the information be protected pursuant to section 12(1) of the [Canadian Nuclear Safety Commission Rules of Procedure](#).

### ***Description of planned Aboriginal engagement activities***

The Aboriginal engagement plan and report should include a high-level outline of proposed Aboriginal engagement activities. The CNSC will take licensees' planned Aboriginal engagement activities into consideration when developing its own Aboriginal consultation activity plans.

The CNSC may participate in licensees' Aboriginal engagement activities, where appropriate. Joint licensee/CNSC activities offer Aboriginal groups the opportunity to understand the regulated facility or activity and the roles and responsibilities of licensees and the CNSC, and to raise questions and concerns with both parties.

### ***Proposed interim status reporting schedule***


Licensees should include a proposed schedule to provide the CNSC with an interim status report (or reports) to update the CNSC on progress against the Aboriginal engagement plan.

The proposed reporting schedule should reflect the anticipated length of the EA and/or licensing process, and the potential impacts to established Aboriginal and/or treaty rights and related interests, including Aboriginal title.



The interim status report should be in the form of a hard copy and/or electronic letter, signed by the licensee's appropriate authority for Aboriginal engagement, and sent to the appropriate CNSC point of contact.

### **3.2.2 Canadian Nuclear Safety Commission activities following receipt of Aboriginal engagement plan and report**

After the CNSC receives the Aboriginal engagement plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. The CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).

If the CNSC determines that Aboriginal consultation activities are required, it will notify the identified  Aboriginal groups and provide information regarding:

- the regulated facility or activity
- the regulatory review process to be followed
- the proposed scope of Aboriginal consultation activities
- CNSC contact information

As the consultation process evolves, the CNSC will review its preliminary list of Aboriginal groups and Aboriginal consultation activity plan, and change them accordingly. The CNSC will show  its preliminary list of identified Aboriginal groups with the licensee. If the CNSC identifies  additional Aboriginal groups, a coordinated approach to ongoing engagement and consultation activities will be discussed with the licensee.

### 3.3 Management of changes

Licensees shall ensure that the CNSC is kept informed of material changes to the Aboriginal engagement plan and report.

#### Guidance


Changes may include the addition or removal of groups, identification of impacts on rights, or any other issues that could affect the licensee's planned Aboriginal engagement activities and/or the CNSC's planned Aboriginal consultation activities. What constitutes a material change and the timing and method for reporting (e.g., email, letter) will be formalized as part of the change management process as set out in the licensee's management system.

### 3.4 Aboriginal engagement section within the Commission Member Document

CMDs are prepared and submitted by licensees prior to Commission hearings. CMDs shall include an Aboriginal engagement section that informs the Commission in its decision making.

#### Guidance

The Aboriginal engagement section of a licensee CMD should include, if applicable:

- a list of identified Aboriginal groups
- a summary of Aboriginal engagement activities conducted
- a summary of concerns  raised related to potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title
- a summary of potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title
- a summary of mitigation measures, or plans and proposed timing for mitigation measures, to address adverse impacts
- a summary of actions taken, or proposed actions to be taken, to address previously unidentified issues or impacts raised by the CNSC
- a summary of planned Aboriginal engagement activities

The basic requirements for CMD submissions are set out in the *Canadian Nuclear Safety Commission Rules of Procedure* (the Rules). Subsections 18(1) and 18(3) of the Rules are specific to submissions made by licensees. Guidance for writing CMDs is set out in



GD-379, *Guide for Applicants and Intervenors Writing CNSC Commission Member Documents*, and related templates.

Much of the information required in the Aboriginal engagement section of a licensee CMD is also required in the Aboriginal engagement plan and report (see section 3.2.1 for related guidance).

### **3.5 Keeping Aboriginal groups and the Canadian Nuclear Safety Commission informed after a Commission decision**

#### **Guidance**

The Commission is authorized to attach any conditions to licences that it deems necessary to meet the CNSC's regulatory requirements. It is at the Commission's discretion to impose licence conditions to ensure that any adverse impacts from the regulated facility or activity are avoided, mitigated or accommodated. Furthermore, licensees may be required to continue engaging Aboriginal groups, as appropriate.

Licensees may also be required to update the CNSC about their continued Aboriginal engagement activities; e.g., the status of mitigation and accommodation measures. Licensees should also update the CNSC on new issues raised by Aboriginal groups with respect to an adverse impact on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, which could affect future operations of the regulated facility or activity or a future licence application. The CNSC will advise the licensee on when and how this information is to be provided, but will use existing processes (such as those set out in RD/GD-99.3), annual reporting, etc.

Regardless of the potential for an adverse impact to an established or potential Aboriginal and/or treaty right, continued communication among licensees, Aboriginal groups with an interest in the regulated facility or activity, and the CNSC can:

- help build long-term relationships and trust with Aboriginal groups
- increase understanding of the regulated facility or activity, by sharing information on the facility's operation and updates on follow-up and/or monitoring programs
- keep the CNSC informed of any continued engagement activities and their outcomes

### **3.6 Non-applicability or non-standard applicability**

In some circumstances, licensees of specific types of facilities or activities are not required to submit an Aboriginal engagement plan and report. Alternatively, the CNSC may ask licensees whose facilities and/or activities are not typically subject to this document's requirements to submit an Aboriginal engagement plan and report. Sections 3.6.1 and 3.6.2 elaborate on these instances.

#### **3.6.1 Non-applicability of Aboriginal engagement planning and reporting requirements**

##### **Guidance**

Licensees are not required to submit an Aboriginal engagement plan and report if the regulated facilities or activities will not have potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title.



The following are examples of regulated facilities or activities to which requirements do not apply:

- licence renewals with no proposed changes to the licensing basis
- administrative licence amendments, such as updates to a company's name or address
- amendments to change shift hours
- updates on employee training plans and relevant policies

### **3.6.2 Canadian Nuclear Safety Commission requests for Aboriginal engagement plans and reports in cases of non-applicability**

#### **Guidance**





The CNSC will sometimes review licence applications for regulated facilities or activities to which this document's requirements do not apply. This is in order to determine if Aboriginal engagement activities – beyond the public information and disclosure requirements of RD/GD-99.3, *Public Information and Disclosure* – are appropriate.

Following its review of such licence applications, the CNSC may still request the submission of an Aboriginal engagement plan and report. Aboriginal engagement activities may be appropriate if licensees have, for example, made commitments during Commission proceedings or were given direction by the Commission. Updates on any previous commitments by licensees, or in response to direction from the Commission, should be included in any subsequent CMDs related to the regulated facilities or activities.

## Appendix A: Considerations for Aboriginal Engagement



The following questions may guide licensees in determining if Aboriginal engagement is appropriate, and if so, to what extent. If the answer is “yes” to one or more of these questions, Aboriginal engagement is likely appropriate. If Aboriginal engagement is determined to be appropriate, the level of engagement should align with the strength of the response. These questions should be considered in conjunction with the consultation activity spectrum (see table 1) when determining the level of engagement for the proposed regulated facility or activity. Conducting research and collecting information to respond to these questions will guide licensees in identifying potentially impacted Aboriginal groups, developing engagement plans, and organizing Aboriginal engagement activities.

- Does the proposed regulated facility or activity have likely or potential impacts on land, water and resources? If there are any impacts, what changes to the current condition or use of lands, water or resources are likely to occur as a result of the proposed regulated facility or activity? Are these changes significant?
- Does the Aboriginal group claim traditional territory that encompasses the location of the proposed regulated facility or activity?
- Are there any First Nation reserve lands or Aboriginal communities near the proposed regulated facility or activity?
- Are you aware of any communication from Aboriginal groups who are raising concerns about the proposed regulated facility or activity or similar facilities or activities in the area?
- Are you aware of any past grievances or issues that an Aboriginal group may have with your industry or organization? How were these grievances addressed?
- Have any Aboriginal groups expressed concerns about the proposed regulated facility or activity and suggested any remedial measures that may accommodate the adverse impacts on their rights and/or related interests, including Aboriginal title? Having such discussions with the relevant decision-makers as early as possible in the consultation process will allow federal officials to discuss proposed options appropriately with Aboriginal groups later in the process.
- Does the proposed regulated facility or activity involve lands or resources that are currently the subject of land claim negotiations or are part of existing comprehensive land claim agreements or self-government agreements?
- Are the potential adverse impacts that have been identified likely to be of a temporary or permanent nature?
- Have any environmental or other assessments of the proposed regulated facility or activity been carried out? Have any environmental or other assessments been undertaken for similar activities in the vicinity of the proposed regulated facility or activity? If so, what adverse impacts on rights and/or related interests, including Aboriginal title, are revealed, if any, by these assessments?
- Are there any other activities occurring in the same area? Is the proposed regulated facility or activity likely to have any cumulative effects in combination with other activities in the same or surrounding area?

- Are you aware of the nature and scope of any asserted rights and/or related interests, including Aboriginal title, in the area?
- Has the Aboriginal group continually occupied the area near the regulated facility or activity?
- Does the group still occupy the area? If the Aboriginal group does not still occupy the area, at what period of time did they occupy it?
- Are there historical and/or current traditional Aboriginal practices occurring in the area?
- Is the Aboriginal group alleging that the claim  rights were exercised prior to European contact (or for the Métis, prior to effective control)? Do they continue to exercise these rights today in a traditional or modernized form?
- Could the stat  of land claims and self-government agreements have implications with respect to the proposed regulated facility or activity?
- Are there any cultural activities or events that may prevent many community members from participating in engagement activities?
- Is the Aboriginal group a signatory of a historic or modern treaty?
- Does the Aboriginal group have a consultation protocol?  
- Has the Aboriginal group been involved in recent litigation or landmark court cases?
- Has the Aboriginal group been involved in any concluded or ongoing litigation, as well as concluded or ongoing land claims?
- Is the Aboriginal group involved in the negotiation for treaty land entitlements?
- Is the Aboriginal group currently involved in any other consultations with industry or government?

## Appendix B: Resources

The following resources are some of the available tools that support the implementation of the CNSC's Aboriginal consultation approach, and that can assist licensees in planning Aboriginal engagement:

- **Aboriginal and Treaty Rights Information System** 
- The [Aboriginal and Treaty Rights Information System](#) (ATRIS) is a Web-based electronic system that erates information on the locations of Aboriginal communities and their potential or established Aboriginal and/or treaty rights. By displaying maps and baseline information on First Nations, Métis and Inuit communities, the ATRIS helps federal officials find information on communities, claims and treaties.

The information in ATRIS references electronic data from multiple existing Aboriginal Affairs and Northern Development Canada (AANDC) databases, and may eventually include information from other federal sources.

- **Consultation Information Service** 

AANDC's Consultation Information Service, which is responsible for ATRIS, provides a single point of access for other government departments and external stakeholders that require additional AANDC information on potential or established Aboriginal and/or treaty rights in Canada.


The Consultation Information Service provides information on:


- contact details for Aboriginal groups and their leadership
- multipartite agreements, historic and modern treaties and their provisions
- comprehensive and specific claims
- litigation and other assertions

Queries regarding specific projects can be sent to <mailto:CAU-UCA@aandc-aadnc.gc.ca>

- **Other resources**

Other sources of information include:

- AANDC regional consultation coordinators, since they may be aware of ongoing or contemplated consultation processes 
- traditional-use studies; e.g., those prepared in the context of environmental assessments and land disposal
- colleagues who have worked with local Aboriginal groups or consulted with them
- websites or other sources that outline legal proceedings involving Aboriginal or treaty rights assertions and interpretation of potential and established rights
- press coverage and public statements in which Aboriginal groups have asserted rights, expressed concerns and proposed desired outcomes
- Natural Resources Canada's Canada Lands Google Earth layer (includes Aboriginal reserves across Canada)
- Natural Resources Canada's Atlas of Canada – historic treaty maps

- [AANDC website](#) – community profiles 
- websites of community and umbrella organizations
- maps on traditional land use (if available to the public)
- studies about Aboriginal traditional knowledge (if available to the public)

## References

1. Canadian Nuclear Safety Commission (CNSC), RD/GD-99.3, *Public Information and Disclosure*, March 2012.
2. CNSC, GD-379, *Guide for Applicants and Intervenors Writing CNSC Commission Member Documents*, March 2012.
3. Aboriginal Affairs and Northern Development Canada, *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, March 2011.

## Additional Information

1. Mackenzie Valley Environmental Impact Review Board, *Guidelines for Incorporating Traditional Knowledge in Environmental Impact Assessment*, July 2005.
2. Canadian Environmental Assessment Agency, “Considering Aboriginal traditional knowledge in environmental assessments conducted under the *Canadian Environmental Assessment Act – Interim Principles*”: [ceaa.gc.ca/default.asp?lang=En&n=4A795E76-1](http://ceaa.gc.ca/default.asp?lang=En&n=4A795E76-1)
3. Canadian Nuclear Safety Commission Participant Funding Program: [nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/index.cfm](http://nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/index.cfm)
4. *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73.
5. *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 2004 SCC 74.
6. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, 2005 SCC 69.
7. Major Projects Management Office, “Early Aboriginal Engagement: A Guide for Proponents of Major Resource Projects”: <http://mpmo.gc.ca/project-description/79>

## CNSC Regulatory Document Series

Facilities and activities within the nuclear sector in Canada are regulated by the Canadian Nuclear Safety Commission (CNSC). In addition to the *Nuclear Safety and Control Act* and associated regulations, these facilities and activities may also be required to comply with other regulatory instruments such as regulatory documents or standards.

Effective April 2013, the CNSC's catalogue of existing and planned regulatory documents has been organized under three key categories and twenty-five series, as set out below. Regulatory documents produced by the CNSC fall under one of the following series:

### 1.0 Regulated facilities and activities

- |        |     |  |
|--------|-----|--|
| Series | 1.1 | Reactor facilities                       |
|        | 1.2 | Class IB facilities                      |
|        | 1.3 | Uranium mines and mills                  |
|        | 1.4 | Class II facilities                      |
|        | 1.5 | Certification of prescribed equipment    |
|        | 1.6 | Nuclear substances and radiation devices |

### 2.0 Safety and control areas

- |        |      |  |
|--------|------|--|
| Series | 2.1  | Management system                        |
|        | 2.2  | Human performance management             |
|        | 2.3  | Operating performance                    |
|        | 2.4  | Safety analysis                          |
|        | 2.5  | Physical design                          |
|        | 2.6  | Fitness for service                      |
|        | 2.7  | Radiation protection                     |
|        | 2.8  | Conventional health and safety           |
|        | 2.9  | Environmental protection                 |
|        | 2.10 | Emergency management and fire protection |
|        | 2.11 | Waste management                         |
|        | 2.12 | Security                                 |
|        | 2.13 | Safeguards and non-proliferation         |
|        | 2.14 | Packaging and transport                  |

### 3.0 Other regulatory areas

- |        |     |                                  |
|--------|-----|----------------------------------|
| Series | 3.1 | Reporting requirements           |
|        | 3.2 | Public and Aboriginal engagement |
|        | 3.3 | Financial guarantees             |
|        | 3.4 | Commission proceedings           |
|        | 3.5 | Information dissemination        |

**Note:** The regulatory document series may be adjusted periodically by the CNSC. Each regulatory document series listed above may contain multiple regulatory documents. For the latest list of regulatory documents, visit the [CNSC's website](#).