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Oral Presentation

Written submission from the Kebaowek First Nation

In the Matter of the

BWXT Medical Ltd.

Application for a Class IB nuclear substance
processing facility operating licence

Commission Public Hearing

June 9-10, 2021

Exposé oral

Mémoire de la Première nation de Kebaowek

À l'égard de

BWXT Medical Ltd.

Demande pour un permis d'exploitation d'une
installation de traitement de substances
nucléaires de catégorie IB

Audience publique de la Commission

9 et 10 juin 2021



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May 10, 2021

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via cns.interventions.ccsn@canada.ca

Dear Commissioners,

**Re: Hearing for a New Licence for BWXT Medical Ltd. – Submissions of
Kebaowek First Nation (“KFN”)**

We are submitting this letter and supporting document in response to a consultation with Kebaowek First Nation (“KFN”) with respect to a new, ten-year license, requested by BWXT Medical Ltd (herein “BWXT Medical”) for a medical isotope facility in Ottawa, Ontario. This submission provides a number of recommendations and conditions which Kebaowek proposes must be met prior to proceeding with the granting of a license.

Kebaowek First Nation is one of eleven distinct First Nations that make up the Algonquin Anishinabeg Nation. Nine are located in Quebec and two in Ontario. KFN’s traditional territory lies on either side of the Ottawa River Basin where our 1000 members live, work and exercise Aboriginal rights, including Aboriginal title, in both Ontario and Quebec. As an Algonquin First Nation Government who represents rights holders to the area of the BWXT Medical Project and to areas that may be affected by the proposal, our duty is to protect our lands, waters and environment for our present and future generations.

We understand the existence of nuclear facilities in and around Algonquin Anishinabeg lands and waterways have adverse impacts on the unceded, inherent rights of Algonquin Anishinabeg peoples in perpetuity. Given the long-lived nature of the radionuclides

created by these facilities' continued operation and their legacy wastes, we are totally opposed to nuclear developments on or near our ancestral land and waterways.

As the Canadian Nuclear Safety Commission (CNSC) is aware, Kebaowek has expressed serious concerns about the CNSC's independence as a regulator. Thus, our comments on this license do not signify that we have attorned to the jurisdiction of the CNSC, but rather provide the recommendations and conditions of licensing we set out as being required in order to protect Kebaowek's rights.

Moving forward we insist that ethical frameworks for consultation for nuclear projects on our lands be worked out in a nation-to-nation fashion. This license request must be construed in a manner consistent with Canadian Constitutional obligations to consult our First Nation community. Therefore, the Ministry of National Resources Canada (NRCAN) shall consult First Nation communities separately if the circumstances so warrant.

We await your response to this license, and advise that our First Nation will continue to do whatever we can to protect our natural resources, culture and way of life from illicit nuclear generating activities that our community never consented to.

Sincerely,

A handwritten signature in black ink that reads "Lance Haymond". The signature is written in a cursive, flowing style.

Chief Lance Haymond

Kebaowek First Nation

Kebaowek First Nation Review

of BWXT Medical, Ltd. (BWXT Medical) Application for a Class IB nuclear
substance processing facility operating license.

FINAL WRITTEN SUBMISSION

presented to

Canadian Nuclear Safety Commission

May 10, 2021

NOTE

This document is the final written submission of the Algonquin Nation of Kebaowek submitted by the Chief and Council on May 10, 2021.

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1. INTRODUCTION

The following submission is presented on behalf of Kebaowek First Nation (KFN) to the Canadian Nuclear Safety Commission (CNSC) provided for under the *Nuclear Safety and Control Act (NSCA)*.

The term Anishnaabe, literally translates as “the real people.” The Algonquin Nation emerges from a rich historical legacy deep within the Ottawa River watershed. The Kitchi sibi as we know it, or Ottawa River as settlers have since renamed it, has been our home and highway since time immemorial. For centuries Anishinaabeg peoples have relied on lands and waterways for our ability to exercise our inherent rights under our own system of customary law and governance, known as Ona’ken’age’win. This law is based on mobility on the landscape, the freedom to hunt, gather and control the sustainable use of our lands and waterways for future generations.

Kebaowek First Nation is one of ten distinct First Nations that make up the Algonquin Nation. Nine are located in Quebec and one, in Ontario. KFN’s traditional territory lies on either side of the Ottawa River Basin and 1,000 members live, work and exercise Aboriginal rights, including Aboriginal title, in both Ontario and Quebec. KFN’s reserve is located in Quebec on Lake Kipawa, 15 km from the interprovincial border. KFN, like many Aboriginal peoples in Canada, is a trans-border community.

BWXT Medical Lt. (formerly BWXT ITG Canada, Inc.) is requesting a license that would authorize it to operate an existing medical isotope facility located within a nuclear substance processing facility in Ottawa, Ontario.

The location of the BWXT Medical’s proposed facility is on the unceded title and rights territory of Kebaowek and the Algonquin Anishinaabeg Nation in what is now the provinces of Ontario and Quebec. KFN are part of the Algonquin Anishinabeg Nation Tribal Council.

As a preliminary matter, KFN would like to draw to your attention some procedural concerns about the conduct of this consultation. Unfortunately, this process has been marred by in-availability of information, and insufficient funding and timing for KFN to prepare comments. In summary, the consultation process is ineffectual for Indigenous participation, unduly limiting us through funding, necessary information and arbitrary timing constraints that in effect leave little sentiment for other Algonquin Nation communities to prepare or participate.

KFN does not endorse, accept, nor acknowledge any claims to any Aboriginal or Treaty Rights made by the Algonquins of Ontario (“AOO”) or any members of AOO. KFN does not recognize the AOO as an entity entitled to consultation or accommodation. Furthermore, we question

CNSC licensing approvals when AOO engagement and resourcing is made available as they are simply a corporation and not Section 35 rights holders.

In order to safeguard against this situation we request KFN's presentation be recorded as a consultation under protest.

2. DUTY TO CONSULT

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

Furthermore, in carrying out the review, we are unclear how the Commission is to recognize the objectives of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹ specifically how the CNSC shall reflect the principles of the Declaration in its recommendations, especially with respect to the manner in which the license review can be used to address potential impacts to potential or established Aboriginal and treaty rights.

In practice, UNDRIP would promote, amongst other things, transitions toward sustainable development. The concept of free, prior, and informed consent (FPIC) promoted by the UNDRIP in advance of project development is of paramount importance to KFN and other First Nation communities across Canada.

The UNDRIP also includes a number of articles recognizing the need for a dominant state to respect and promote the rights of its Aboriginal peoples as affirmed in treaties and agreements, including how Aboriginals participate in decision-making processes that affect their traditional lands and livelihoods.²

For example, article 18 provides as follows:

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

¹ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at:

<https://www.refworld.org/docid/471355a82.html>

² *Ibid*

Moreover, article 32 (2) of the UNDRIP states:

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

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

In 2008, Elinor Ostrom introduced how governments should “evolve institutional diversity”. What this refers to is the adaptation of the existing mono-cultural institutions and/or the fostering of new institutional arrangements that recognize Aboriginal rights and empower communities to enter into co-operative schemes – schemes that respect and recognize First Nation rights, values and priorities even when different to those of dominant society. As she stated, “we have got to understand the institutional diversity that is out there, because if we are actually going to protect biodiversity we have to have institutions that match the complexity of the systems that are evolved and those systems have to be complex.” Her motto was, “Build enough diversity of the world and allow multi-tier systems at multiple scales so that you don't have an uniform top down panacea that is predicated to cure everything and instead of curing it, kills it.”³

It is this kind of multi-tier system that could provide KFN with the political space to work in partnership with other stakeholders, industry and government agencies. However, it remains to be seen whether CNSC can be reformed to recognize the cultural and other legal specificities of Algonquin Anishinaabeg rights and land use, and allow the kind of institutional diversity that Ostrom calls for to truly build sustainable societies.

KFN and the Algonquin Anishinaabeg Tribal Council are currently petitioning the Minister of Natural Resources Canada (NRCAN) to try to resolve the ongoing consultation crisis between CNSC and the Algonquin Anishinaabeg Nation. Historically, Kebaowek First Nation and the Algonquin Anishinaabeg Nation was never consulted on the nuclear developments and relicensing of Chalk River Nuclear operations.

³ Ostrom, Elinor. 2008. *Sustainable Development and the Tragedy of the Commons*. Stockholm Whiteboard Seminar, Stockholm Resilience Centre TV, online: <http://www.youtube.com/watch?v=ByXM47Ri1Kc>

Furthermore, what is altogether absent from licensing documents before the CNSC, is any consideration of the requested licence in tandem with other existing and ongoing nuclear project reviews. These include:

- Micro Modular Reactor Project at Chalk River (IAA Ref. #80182)
- Near Surface Disposal Facility Project (IAA Ref. #80122)
- Nuclear Power Demonstration Decommission Project (IAA Ref. #80121)
- CNL Access Road Upgrade (IAA Ref. #81243)
- CNL Material Pit Expansion Project (IAA Ref.#81209)
- CNL Intermediate Waste Storage Area (IAA Ref. #81177)
- CNL Bulk Storage Laydown Area (IAA Ref. #81178)

Maintaining an individualized or a licence-specific approach to engagement is contrary to Canada's stated intent to advance reconciliation and nation-to-nation relationships. In our view, this fragmented approach diminishes the ability of Kebaowek to comprehensively and effectively address the environmental, socio-economic and health effects of these nuclear projects, which, if considered in their entirety, could have profound impacts and create potential infringements of Kebaowek's section 35 constitutional rights.

Viewed together, we can begin to understand the magnitude of direct, indirect and cumulative effects posed by nuclear facilities' operations, the radioactive and non-radioactive wastes they produce, and accompanying effects from the transport of nuclear substances and the storage of waste. Together, these activities have led to the permanent deterioration of Algonquin Territory and given the long-lived nature of radionuclides, they are impacts, which cannot be taken away.

Unlike other regulatory proceedings, there is no stated commitment in the *NSCA* or its regulations that requires Indigenous knowledge to be taken into account. However, the obligation duty is independent of any other statutory or procedural requirements and/or obligations under any other legislation.

Taking into account the rights, interests and customary laws of Native communities is an integral part of reconciling nuclear activities with other possible uses of the territory. As a new licence, Kebaowek is disappointed by the lack of attention to conditions which may facilitate the inclusion of Kebaowek and upholding of Indigenous rights. As drafted, there is no role for Kebaowek contemplated for instance, in the CNSC's Independent Environmental Monitoring Program (IEMP) for the site nor BWXT Medical's Environmental Monitoring Program.

Security of First Nations' lands must be ensured through in-depth consultation and direct participation. Indeed, it is a principle of article, per Article 29.2 of the UNDRIP that specifically addresses the issues before the CNSC, requiring that; "States shall take effective measures to

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

In response, we request the following licence specific changes be made and new conditions added:

1. Kebaowek values collaborative processes that are clear, transparent and predictable, and where information is shared in a timely and accessible manner. This requires BWXT Medical to have an ongoing duty to disclose notices, changes to the licence, or the submission of revised licensing documents to CNSC. As Constitutional rights holders on Unceded Algonquin lands Kebaowek can not be restricted from “BWXT business proprietary information.” Kebaowek should be promptly communicated with and all documents made fully available in French and English.
2. The ‘proponent’ BWXT Medical should enter into a formal licensing process agreement to be negotiated with Kebaowek.

Recommendations

- 1. It is incumbent on the CNSC that before making this decision, there be collaboration to the furthest extent possible with Kebaowek and the Algonquin Anishinaabeg Nation to ensure decisions are made respectful of their law and practices and the free, prior and informed consent (FPIC) principle. Without the duty to consult being fulfilled, there isn’t the requisite constitutional basis to proceed with this license.**
- 2. If the CNSC is to discharge its duty to consult, the CNSC must demonstrate that Indigenous communities, including Kebaowek, were engaged in making a licensing decision, and it must be clear what was heard and how it factored into the license decision. Indeed, BWXT’s Indigenous engagement plan was among the documents to which Kebaowek was denied access. To date, there has not been meaningful consultation with KFN necessary to allow the license to be granted.**
- 3. UNDRIP must be a minimum framework for the relationship between Aboriginal peoples and the Canadian State and nuclear development decisions across Canada. CNSC engagement should better reflect Canada’s commitments through international instruments like UNDRIP.**
- 4. Reforming licensing assessment and the role of the Algonquin Anishinaabeg Nation in such assessment requires CNSC understanding that mutuality, respect and consultation are integral to Algonquin social and political organization on a number of levels: family- to-family, band-to-band, and nation-to nation. From and Algonquin Anishinaabeg perspective, the current CNSC process should be harmonized with that expectation providing adequate basis for developing ‘real’ Anishinaabeg nation-to nation relationships and supporting ‘real’ Algonquin Anishinaabeg institutions.**

5. This requires reviewing other pieces of federal legislation such as but not limited to the Federal Comprehensive Claims Policy that support and/or create false entities and processes that further undermine ‘real’ Algonquin Anishinaabeg participation in environmental decision making.

6. KFN does not endorse, accept, or acknowledge any claims to any Aboriginal or Treaty Rights made by the Algonquins of Ontario (‘AOO’). KFN does not recognize the AOO as an entity entitled to consultation or accommodation. To this end, CNSC and other federal authorities evaluating licensing projects pursuant to *Canadian Constitution* should restrict participation of the Algonquins of Ontario (‘AOO’) also known more appropriately as an ALGONQUIN OPPORTUNITY (NO.2) CORPORATION.⁴

3. NUCLEAR HISTORY ON ALGONQUIN ANISHINAABEG LANDS AT CHALK RIVER AND BEYOND

It is important for our community to note that before the Government of Canada completed construction of the Chalk River Laboratories (CRL) in 1944, no assessment or license approval was undertaken with the Algonquin Anishinaabeg Nation to determine how the nuclear complex might affect upstream or downstream areas of the Kitchi sibi. No thought was given to how the nuclear complex might affect the members of the Algonquin Anishinaabeg Nation, our dependence on the then plentiful watershed resources of the Kitchi sibi, or our multi-generational socio-cultural connection to the places and customs associated with the Kitchi sibi. No thought was given to whether the promises of the Royal Proclamation could be upheld if the complex was built. No thought was given to Algonquin jurisdiction around the Kitchi sibi at all.

We understand, CRL was first opened in 1944, during the Second World War as Canada's primary facility for nuclear research and while CRL was originally planned to be used for warfare purposes during the Second World War, the war ended shortly after the site was selected. The 1945 Zero Energy Experimental Pile (ZEEP) reactor the basis for the 1947 National Research Experimental reactor, or NRX, and the 1957 National Research Universal (NRU) reactor came online marking a significant achievement with Canada having the world's most powerful research nuclear reactor. The NRU converted from highly enriched uranium (HEU) to low enriched uranium (LEU) in 1991. The NRU was permanently shut down in March 31, 2018, and the NRX in 1993. Although the reactors were tucked away in a remote area on the shore of the Kitchi-Sibi, they ran around the clock producing isotopes and over time the CRL facility created significant environmental and human health risks to Algonquin Anishinaabeg and non-Algonquin people alike who live in the vicinity of CRL. There have been at least four significant reported nuclear incidents at CRL, namely:

⁴ Ontario Superior Court of Justice Court File no. CV_18-00603975-000 “*Chief Kirby Whiteduck on his own behalf of the ALGONQUINS, and the ALGONQUIN OPPORTUNITY (NO.2) CORPORATION.*”

- The 1952 NRX Incident - “A power excursion and partial loss of coolant in the NRX reactor resulted in significant damage to the NRX reactor core. The control rods could not be lowered into the core because of mechanical problems and human errors. Three rods did not reach their destination and were taken out again by accident. The fuel rods were overheated, resulting in a meltdown. The reactor and the reactor building were seriously damaged by hydrogen explosions. The seal of the reactor vessel was blown up four feet. In the cellar of the building, some 4,500 tons of radioactive water was found. To avoid having the water reach the Ottawa River, a pipeline was built to a sandy area about 1,600 m away. The contaminated water, containing about 10,000 curies of long-lived fission products, was pumped to this area and allowed to seep away. No radioactivity was detected in the creek which drained this area to a small lake. During this accident, some 10,000 curies or 370 TBq of radioactive material was released.”(Jedicke, 1989).
- The 1958 NRU Incident - “In 1958, there was a fuel rupture and fire in the National Research Universal reactor (NRU) reactor building. Some fuel rods were overheated. During a facility shutdown, a robotic crane pulled one of the rods with metallic uranium out of the reactor vessel. When the arm of the crane moved away from the vessel, the uranium caught fire and the rod broke. The largest part of the rod fell down into the containment vessel, still burning. The whole building was contaminated. The valves of the ventilation system were opened, and a large area outside the building was contaminated. Scientists and maintenance personnel in protective clothing were running along the hole in the containment vessel with buckets of wet sand, throwing the sand down at the moment they passed the smoking entrance and extinguished the fire. The clean up involved a large number of personnel, including AECL staff, soldiers from CFB Petawawa, and workers from the Civil Defense Unit based in Arnprior, Ontario, and a commercial cleaning company in Ottawa, Ontario.” (Whitlock, n.d.).
- 2008 Radioactive Leakage at the NRU Reactor - “On December 5, 2008, heavy water containing tritium leaked from the NRU. The leaked water was contained within the facility, and the CNSC was notified. In its report to the CNSC, AECL noted that 47 litres of heavy water were released from the reactor, about 10% of which evaporated, and the rest was contained. AECL further noted that the spill was not serious and did not present a threat to public health. The public was informed of the shutdown at the reactor, but not the details of the leakage, since it was not deemed to pose a risk to the public or the environment. The leak stopped before the source could be identified, and the reactor was restarted on December 11, 2008 with the approval of the CNSC, after a strategy for dealing with the leak (should it reappear) was put in place” (Spears, 2009).
- Heavy Water Leaks from the NRU Reactor - “In late 2008, the NRU reactor experienced a leak from a 2.4 inch crack in a weld in its reflector system. The leaking light water was

allowed to flow into the Kitchi sibi after collection and processing at an on-site water treatment facility in accordance with CNSC, Health Canada, and Ministry of the Environment regulations. The CNSC determined that the leakage is not a concern from a health, safety or environmental perspective (Spears, 2009). The NRU experienced another heavy-water leak in 2009 that led to a 15-month, \$70-million shutdown and a global shortage of medical isotopes. That followed emergency safety shutdowns in 2007 and 2008.” (Macleod, 2016).

In the late 1980s, Atomic Energy of Canada Limited (AECL) began to acknowledge that continued isotope production would require the construction of a new reactor to replace capacity lost by the planned closing of the NRX in 1993, and the planned closing of the NRU early in the new millennium. Design work on a replacement, originally under the name "Maple-X10", began in the late 1980s. As part of a restructuring taking place around the same time, the medical isotopes side of AECL was reorganized as Nordion in 1988. Work on the X10 project essentially ended at this point. Nordion company was purchased by MDS in 1991, and an agreement was reached between AECL and MDS Nordion that a new facility dedicated to the production of medical isotopes would be needed.^[3] A formal agreement was signed to begin the project in August 1996. Following a year-long environmental assessment, construction began in December 1997.^[4]

The Multipurpose Applied Physics Lattice Experiment (MAPLE) 1 and 2, and a dedicated target processing facility were completed in 2000 to replace the NRU reactor. These facilities were later renamed MDS Medical Isotope Reactors (MMIR), as a dedicated isotope-production facility built by AECL and MDS Nordion they were scheduled to produce Mo-99 starting in 2000. The Mo-99 production capacity of these new facilities was to exceed the then global demand for Mo-99 (see OECD-NEA, 2010). However, the reactors were never used to produce Mo-99 because of technical and regulatory problems that were too expensive to address (IAEA 2009). In 2008, AECL terminated the MAPLE project and in 2011 CNSC renewed the operating license for Chalk River and the NRU to 2016. BWX Technologies Inc., in Lynchburg, Virginia, previously supplied highly enriched uranium (HEU) targets for the MAPLE reactors at CNL. These reactors were constructed to produce Mo-99 for Nordion but were never put into commercial use. (see NRC, 2009, pp.115-120)

Although we are not aware of the Nordion Facility history in Ottawa we are very concerned about for profit spin-offs to produce Mo-99 and Technetium-99m (Tc-99m). Tc-99m is a decay isotope of Molybdenum-99 (Mo-99). At this stage, there is no indication by BWXT as to what other medical isotopes or radiopharmaceuticals it plans to manufacture.

4. DENIED ACCESS – PROCEDURAL & DOCUMENTARY INEQUITIES

A repeated issue Kebaowek faces in reviewing project proposals, is the inadequate information which is provided and often, differential levels of information wherein one party has greater access than the other. In this instance, there is clearly inequitable levels of access to licensing documents inhibiting our review of procedures and activities which have direct bearing on the lands and waters of our traditional territory.

Kebaowek sought copies of all documents referenced in CNSC Staff CMD. However, references 5, 9, 13, 17, 18, 19 and 40 were all deemed internal and not provided. They are:

5. BWXT Medical, CPM-6-06, Nordion Environmental, Health and Safety Policy, 2018.
9. BWXT Medical, SE-EHS-009, EHS Regulatory Reporting and Notifications, 2018.
13. BWXT Medical, IS/SR 1070 Z000, Final Safety Analysis Report for the Nuclear Medicine Production Facility, 2018.
17. BWXT Medical, SE-ENV-015, Nordion Environmental Protection Program, 2018.
18. BWXT Medical, SE-ENV-001, Environmental Management System Manual, 2018.
19. BWXT Medical, SE-RP-008, Radiation Protection Manual, 2020.
40. BWXT Medical, SE-LIC-020, Public Information and Disclosure Program and Indigenous Engagement for BWXT ITG, 2020.

In response to our disclosure request, BWXT Medical provided short summaries. These summaries however, did not expand upon the information already provided in the licensing documents and thus, cannot be considered equal in depth or detail to the originating documents.

Kebaowek has actively engaged on a range of significant infrastructure and energy projects and at a minimum, a company's environmental plan and Indigenous engagement protocol are documents which are public for the very reason they are necessary in building positive relationships, advancing community trust and economic reconciliation with First Nations.

As Canada's nuclear regulator, when the CNSC is reviewing factual, technical or scientific evidence tendered by proponents like BWXT Medical, there must be sufficient rigour and minimum procedural safeguards in place so that CNSC's purpose of disseminating information to the public per section 9(b) of the NSCA and ensuring a licensing decision is arrived at in a fair and credible manner, can be fulfilled. In this circumstance, it is Kebaowek's view that neither have been fulfilled.

We therefore make the following recommendations to the CNSC:

Recommendations

7. The CNSC provide a response in writing explaining how the federal Crown sought to address concerns which have been raised by Kebaowek. In the event we feel we have outstanding concerns, we retain the right to make submissions to the CNSC which shall be made publicly available and posted to the licensee and hearing project page managed by the CNSC.

8. At a minimum, any document referenced by the CNSC in its licensing hearings – which are purportedly open to the public – should also be public. Instead, the CNSC is enabling a hearing process where documents directly pertinent to our rights and our ability to meaningful review, are withheld. We encourage the CNSC to work with licensees to develop documents which by default, are available for the public.

5. ASSESSING RESOURCE FAIRNESS

Adequate resources to carry out meaningful consultation between parties must be assessed and negotiated, not unilaterally determined by CNSC staff. Our experience to date is the CNSC does not follow the general cost or time considerations to fulfill the Crown's legal obligations to fulfill the duty to consult.

The availability of adequate participant funding is essential to KFN's ability to participate in CNSC licensing reviews. Although we recognize that some funding through the Participant Funding Programme (PFP) is very important, the current levels are inadequate for KFN to fill in the information gaps it finds in the BWXT Medical Application.

Furthermore, it is imperative that BWXT's \$10.54 million dollar project and licensing application be put on pause until a proponent consultation agreement is in place for Kebaowek First Nation and there be financing to enable further review of this licencing proposal. The CNSC's participant funding budget limited to \$17,100.00 is in no way sufficient to resource the review of existing licensing documents and additional information that has not been forthcoming by the proponent.

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

Recommendations

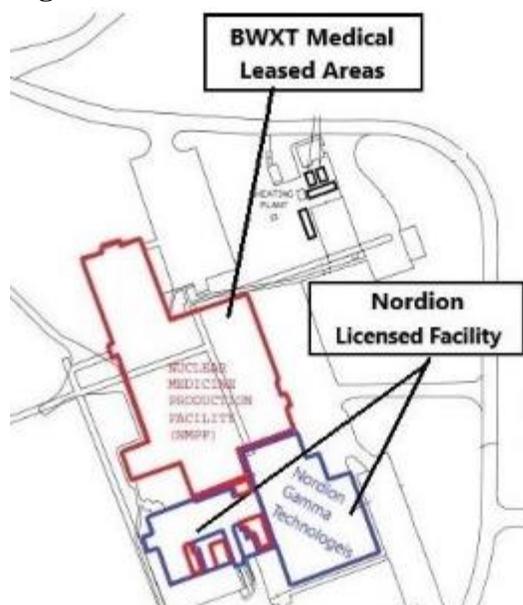
9. Participant funding needs to be increased to allow meaningful Aboriginal participation in CNSC licensing reviews.

10. Aboriginal institutions require sufficient financial resources to build capacity to undertake nuclear project reviews properly. They require increased funding as they take on increased responsibility.

6. CHOICE OF LICENCE & LENGTH

As described by CNSC Staff (see Figure 1 below), the proposed BWXT Medical licence would authorize BWXT Medical to operate the Nuclear Medicine Production Facility (NMPF), and the operation of this facility would be removed from Nordion’s Licence Conditions Handbook. Nordion would continue to operate the Cobalt Operations Facility (COF) only. CNSC Staff state “no licence amendment would be required.”⁵

Figure 1: BWXT Medical and Nordion licenced and leased areas



(source: BWXT Medical)

In support of the new, 10-year licence, there are repeated assurances by CNSC Staff that ‘Nordion’s past performance at the facility, appropriately reflects CNSC staff’s regulatory expectations for the operation of the facility,’ and likewise, the past performance of the facility ‘has been in a manner compliant with CNSC requirements.’⁶

⁵ CNSC Staff CMD, p 7

⁶ CNSC Staff CMD, p 6

However, these statements and the recommendation by CNSC Staff to grant the licence fails to consider significant operational changes at the site regarding the production of molybdenum-99 (Mo-99), that BWXT Medical is a first-time licensee, and the success of Nordion and BWXT Medical partnership remains to be seen. It is for these reasons, each detailed below, that Kebaowek strongly opposes a ten-year licence:

1. A significant change is proposed at the site which would allow BWXT Medical to produce molybdenum-99 (Mo-99) using neutron activation of natural molybdenum-98 targets in a reactor. The foregoing documentary and consultation omissions must be remedied before proceeding with any licence. A ten-year licence would be a further violation of the Indigenous and participatory rights which should be prioritized by the CNSC as Canada's nuclear regulator.
2. BWXT Medical is a first-time licensee before the CNSC and does not have performance or compliance record which can be used as precedent in this instance. In making a licensing decision pursuant to section 24(4) of the *Nuclear Safety and Control Act*, the CNSC must be satisfied that the licensee is qualified to make adequate protection for the protection of the environment and human health. The past performance of this facility cannot be used to demonstrate that a licensee is qualified to undertake the proposed licenced activity.
3. Nordion and BWXT Medical will share the oversight and compliance of a number of Safety and Control Areas. For reasons of different staff, leadership, company direction and internal management, the success of these shared responsibilities cannot be assumed. Further, of the shared responsibilities described by CNSC Staff (excerpted below), none are reflected in the proposed Licence of LCH with the same level of detail or clarity. It is critical they be expressly set out in the LCH. These areas of shared oversight include:
 - *Staffing and operations*: BWXT Medical and Nordion will have joint committees to ensure that relevant experience in the facility is shared across both organizations⁷
 - *Safety and fire protection*: CNSC staff note that BWXT Medical has agreements in place with Nordion to ensure that measures for security, fire protection and emergency response are in place at the NMPF⁸
 - *Fire protection*: As separate licensees, BWXT Medical and Nordion must conduct separate fire response drills in order to meet their regulatory requirements under CSA N393-13. This will require additional effort and coordination with OFS to facilitate. CNSC staff confirm that BWXT Medical has proactively worked with OFS on the

⁷ CNSC Staff CMD, p 13

⁸ *Ibid*, p 16

- development of a formal service agreement between BWXT Medical and OFS to ensure full and continued support to BWXT Medical⁹
- *Radiation protection*: BWXT Medical has set annual performance targets for radiation protection. Both Nordion and BWXT Medical's Executive and Environmental Health and Safety management teams will routinely review progress against these targets. BWXT Medical will work with the landlord Nordion for future facility improvements¹⁰
 - *Environmental Monitoring*: BWXT Medical will be responsible for a portion of the environmental releases measured and reported¹¹

For these reasons, it would be contrary to the *NCSA* for the CNSC to issue a licence to BWXT Medical as all necessary licence documents have not been updated and the licence and LCH drafted to clearly delineate roles and responsibility. Currently, there is not sufficient information before the Commission to demonstrate the licensee is qualified to undertake the proposed activities, including the production of Mo-99.

7. ENVIRONMENTAL REPORTING & HEALTH

Environmental Monitoring

The licensing documents including that by CNSC Staff make conclusive statements about the environmental protection measures in place for the facility (i.e. with reference to CSA standards and the proponent's environmental and radiation protection programs which are not publicly viewable). However, there is a lack of data and other contextual information accompanying these statements which explains on what basis these conclusions are reached. This problem is further exacerbated given the documents referred to by CNSC Staff were denied when requested by Kebaowek.

Our review also shows that CNSC Staff erred by using the past performance of the facility to derive BWXT Medical's ability to undertaking environmental protective actions.¹² We remind the CNSC that in making a decision on this licence request, it must be established that the licensee:

24(4)(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

⁹ *Ibid*, p 40

¹⁰ *Ibid*, p 30

¹¹ *Ibid*, p 36

¹² CNSC Staff CMD, p 38

security and measures required to implement international obligations to which Canada has agreed.

In other words, absent data, findings and an intelligible rationale setting out how the licensee – and not the facility – meets this threshold set out in the *NSCA*, its regulations and the CNSC’s REGDOC 2.9.1, statements which conclude that “BWXT Medical will make adequate provision for the protection of the public and environment” are not supportable.¹³

We also request the following specific information from the CNSC. Kebaowek submits this is crucial information which must be disclosed in order to determine the sufficiency of BWXT Medical’s environmental monitoring. The following is also information required to be provided in the licence application as set out in the *Class I Nuclear Facilities Regulations*, SOR/2000-204.

Recommendations

11. For emissions and discharges to soil, groundwater and air, please provide:

- Methods and frequency of monitoring and a comparison of these approaches to other Class 1B nuclear facilities**
- Roles and responsibilities**
- Post-operation monitoring requirements**
- Plans showing the location of the proposed monitoring locations**
- Plans showing the release points to air, land and water from the facility**
- Anticipated rates of discharge**
- Physical, chemical, and radiological characteristics of all discharges and emissions**

12. As previously commented, there has been no outreach with Kebaowek to discuss our role in environmental monitoring or oversight. We therefore request the following licence specific changes be made and new conditions added:

- a. Participation by Kebaowek and other interested First Nations should be provided through an environmental committee, where participating First Nations will have full and equal participatory rights to technical, monitoring and oversight matters. The terms of reference for such a committee, with capacity funding, shall be established within 12-months of any licence being granted.**
- b. BWXT Medical shall prepare and provide quarterly reports to Kebaowek with costs related to Kebaowek’s understanding and responding to such reporting being covered by BWXT Medical.**

¹³ CNSC Staff CMD, p 39

c. Require as a condition of licensing that BWXT Medical develop a community health study conducted by an independent expert, as agreed to by Kebaowek, with the costs of the health studies paid for by BWXT.

d. Require as a condition of licensing that BWXT Medical shall incorporate into its emergency and public disclosure plans, that notice will be given to First Nations of adverse events, unintended releases to the environment, changes to licensing documents or programing with respect to environment, radiation and emergency protections.

Environmental Risk Assessment

Kebaowek is shocked that the CNSC did not require a revised Environmental Risk Assessment (ERA) by BWXT Medical given the new operations to produce Mo-99 and new roles and responsibilities for the oversight of the facility.

Currently, BWXT Medical's application included an ERA report that was completed for the Nordion facility in May 2017. BWXT Medical obtained permission from Nordion to use the report and CNSC staff accepted that Nordion's ERA was applicable to BWXT Medical.¹⁴

However, according to the CNSC's REGDOC 2.9.1 *Environmental Protection* "the ERA is subject to regular updates (at least every five years, and whenever a significant change occurs in either the facility or activity that could alter the nature (type or magnitude) of the interaction with the environment" (emphasis added). Despite the proposed significant change in the operations at the facility, the ERA, which supports the licence renewal application, does not take into account these changes.

On the basis that REGDOC 2.9.1 requires there be an updated ERA when significant changes occur, a revised ERA is merited in this instance. Further, as the ERA will be updated in 2022 (per the requirement they be updated *at least* every 5 years), a revised ERA should have been required for this licensing hearing.

KFN is also concerned that when the revised ERA is submitted to the CNSC, it will not be part of a public hearing, nor attract any comment opportunity. Therefore, Kebaowek is limited in providing comments on an ERA which is not tailored to the request before the CNSC and further, we will not have an opportunity to review or comment when a revised ERA is submitted. This not only diminishes our ability to fully participate in this hearing, but removes our ability to provide comment in a public forum before a panel of CNSC Commissioners.

¹⁴ CNSC Staff CMD, p 38

Recommendations

13. The CNSC should not proceed with licensing until the licence application has been updated with an ERA from BWXT Medical which reflects changes in operation and production, and clearly delineates the roles and responsibility within the facility.

Independent Environmental Monitoring Program

CNSC Staff's CMD states that in addition to the ERA, to complement ongoing compliance activities the CNSC has implemented its Independent Environmental Monitoring Program (IEMP).¹⁵ In referencing the validity of the IEMP, CNSC Staff's CMD notes "results for Nordion's [IEMP] indicate that the public and the environment in the vicinity of the Nordion facility are protected."¹⁶ While Kebaowek supports the existence of an IEMP, we do not support the CNSC's findings on this matter for the reasons detailed below. Further, we are dismayed by the CNSC's lack of engagement to consider impacts on Algonquin Territory, despite public statements by the CNSC that as a regulator it is "committed to reconciliation" and "collaboration among Indigenous groups."¹⁷

First, Kebaowek reiterates the environmental and human health protection measures being considered by the CNSC should be specific to the licensee and not the facility. The application before the CNSC is not a site wide licence but rather a licensee-specific licence. Kebaowek once again asks the CNSC to detail the IEMP which is specific to BWXT Medical as the licensee. Further, the IEMP data that is referenced for the site is from 2018. With only two data points (from 2016 and 2018), we submit the CNSC does not have the requisite basis to definitively state "the public, Indigenous communities and the environment in the vicinity of Nordion are protected and that there are no expected health or environmental impacts."¹⁸

Second, we understand that the purpose of the CNSC's IEMP is to verify the protection of the public and the environment around licensed nuclear facilities. This furthers the goals of the CNSC that are set out in section 9(b) of the NSCA, which includes "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." However, the statutory mandate of the CNSC as contemplated by the NSCA has not been met as the CNSC Staff's CMD only has one paragraph

¹⁵ CNSC Staff CMD, p 35

¹⁶ *Ibid*

¹⁷ CNSC, "Remarks by President Rumina Velshi at the G4SR-2 Virtual Summit" (18 Nov 2020), online: <https://nuclearsafety.gc.ca/eng/resources/presentations/president-velshi-remarks-g4sr.cfm>

¹⁸ CNSC, Transcript of Public Hearing (5 March 2020) online: <http://www.nuclearsafety.gc.ca/eng/resources/maps-of-nuclear-facilities/iemp/nordion.cfm>, p 119

about the IEMP. Instead of providing specifics, it simply states that there is an IEMP program. Upon further external review by Kebaowek, we discovered the most recent IEMP data dates to 2018.¹⁹ Kebaowek believes the treatment of the IEMP for this new licensee is critically deficient and this level of cursory review in licensing documents should not be accepted by the CNSC.

Third and most critically, Kebaowek has previously heard the CNSC state that the “incorporation of indigenous knowledge and values and collaborating with communities on the Independent Environmental Monitoring Program is central to the program” (emphasis added).²⁰ As the CNSC’s Team Lead for Indigenous Relationships, Adam Levine, has previously explained, collaborating with First Nations has resulted in the development of IEMP sampling plans wherein a range of a different sampling campaigns are considered and plans developed which reflect Indigenous values and interests.²¹

In this instance, Kebaowek has not been contacted by the CNSC in advance of this hearing to have a direct conversation about the IEMP and our potential role. While the CNSC has stated in other licensing hearings that “we are certainly happy to talk about how we can support that [Indigenous engagement in IEMP] through our Participant Funding Program” and “there are lots of different options on the table and we are going to tailor it to each community,”²² such commitments should not be post-hearing commitments. It is integral there be *early* engagement with First Nations when a licensing application is contemplated. Making commitments to engage post-hearing are not meaningful and should not be undertaken *post hoc*.

Recommendations

14. Kebaowek therefore requests the following licence specific information be provided and engagement undertaken before proceeding with licensing:

a. The CNSC should explain why a site rather than licensee-specific IEMP is relied upon. A licensee-specific IEMP should be required and the parameters the CNSC intends to monitor and the frequency of updates (given existing data dates to 2018) clearly set out in licensing documents and online. The CNSC should commit to updating the current IEMP program and website which currently excludes any mention of BWXT Medical.

b. Indigenous involvement within the development of the IEMP should not be a *post hoc* licensing requirement. As a regulator which promotes itself as being “committed to

¹⁹ CNSC, “Independent Environmental Monitoring Program: Nordion (Canada) Inc” online: <https://nuclearsafety.gc.ca/eng/resources/maps-of-nuclear-facilities/iemp/nordion.cfm>

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

reconciliation” and “collaboration among Indigenous groups,”²³ the CNSC should have provided opportunities for Kebaowek to provide input on the IEMP and provide meaningful results to our community. Further, we do not accept CNSC’s approach to engagement wherein commitment for involvement comes after rather than precedes the licensing hearing.

8. RADIOACTIVE & NON-RADIOACTIVE WASTES

The production of Mo-99 by aqueous chemical processing of irradiated HEU or LEU targets produces the following four waste streams:

- Uranium solids (alkaline target dissolution only). These solids, which contain LEU or HEU, are placed into long-term storage for reuse or disposal.
- Processing off-gases, primarily the noble gases xenon (Xe-131m, Xe-133, Xe-133m, and Xe-135) and krypton (Kr-85). These gases are stored for several months to allow time for radioactive decay. Following storage, the gases are vented to the atmosphere.
- Process liquids from target dissolution. These liquids contain fission products and neutron activation products produced during target irradiation. These wastes are typically solidified and packaged for disposal.
- Other solid wastes produced during target processing: for example, radioactively contaminated processing equipment. These wastes are also packaged for disposal.²⁴

Each Mo-99 supplier has a different approach for managing these wastes, depending on the regulations and storage/disposal facilities available in host countries. Production of Mo-99 by aqueous processing of LEU targets will produce these same types of waste streams, but some waste volumes will be larger. Current global Mo-99 suppliers are developing additional capacity to manage these wastes as part of their conversion efforts.

BWXT Medical’s submission to the CNSC references that ‘waste chemicals will be picked up by a licensed waste disposal company for treatment and disposal,²⁵ and non-hazardous waste will be sent to landfill,²⁶ while radioactive wastes will be collected and transported to a licenced radioactive waste management facility.²⁷

²³ CNSC, “Remarks by President Rumina Velshi at the G4SR-2 Virtual Summit” (18 Nov 2020), online: <https://nuclearsafety.gc.ca/eng/resources/presentations/president-velshi-remarks-g4sr.cfm>

²⁴ National Academies of Sciences, Engineering, and Medicine. *Molybdenum-99 for medical imaging*. National Academies Press, 2016.

²⁵ BWXT CMD, p 48

²⁶ *Ibid*

²⁷ BWXT CMD, p 39

However, there is an incomplete picture of the movement of BWXT Medical's waste (radioactive and non-radioactive) offsite. While Kebaowek is generally able to view offsite transfers and accompanying emissions for non-radioactive transfers on the National Pollutant Release Inventory for other companies and facilities in Algonquin territory,²⁸ an equivalent is not available for radioactive materials.

In order to document these transfers, Kebaowek asks the CNSC require the following information prior to opining on the sufficiency of waste management. Further, Kebaowek retains the right to provide further submissions on this topic as this information was requested by proponent but not disclosed:

- Substance name
- Units/weight/volume
- Method of disposal and location
- Percentage change in quantity from previous years

The CNSC is obliged to, pursuant to international law conventions Canada has ratified, including international law norms and principles pertaining to human and Indigenous rights that it ensure a licensing procedure that meets these international norms. We note that Canada is a signatory to the UNDRIP. Article 29.2 of UNDRIP specifically addresses the issue of waste we raise before the CNSC, as it requires that; "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."

In this instance, consent has not been sought and nor has the information been provided such that we can make an *informed* decision on the new and existing waste streams accompanying the Nordion/BWXT Medical facility. Thus, this licensing proceeding is non-compliant with international law conventions, principles and norms.

Before proceeding with licensing, the CNSC should set out in writing how it considered and complied with UNDRIP, specifically Article 29.2 in making the recommendation that this licence be granted for a period of 10 years and, expressly require that the FPIC principle be upheld. Kebaowek submits the CNSC is proceeding with its licensing proceed contrary to its obligations with regards to our rights under UNDRIP, including Articles, 1, 7, 29 and 32.

²⁸ See the NPRI's site profile for Nordion, online: https://pollution-waste.canada.ca/national-release-inventory/archives/index.cfm?do=substance_details&lang=En&opt_npri_id=0000002247&opt_cas_number=NA%20-%202008&opt_report_year=2017

Recommendation

15. The CNSC should set out in writing how it considered and complied with UNDRIP, specifically Article 29.2 in making the recommendation that this licence be granted for a period of 10 years and, expressly require that the FPIC principle be upheld.

9. LONGTERM PLANNING & DECOMMISSIONING

In light of the historical omission to consider decommissioning from the outset of operations, Kebaowek strongly urges decommissioning planning to be a mandatory component of all licensing. Unfortunately, this aspect remains critically vague for the facility and as CNSC staff note, they “expect Nordion to submit a revised preliminary decommissioning plan, decommissioning cost estimate and financial guarantee for Commission approval once BWXT Medical has its financial guarantee in place.”²⁹

Like all nuclear facilities, decommissioning is the inevitable end of life. However, as the International Atomic Energy Association (IAEA) cautions, it has only been more recently that attention has been focused on the generation of radioactive waste and the radiological hazards associated with decommissioning.³⁰

Currently, only three high level and summary paragraphs are provided regarding BWT Medical’s decommission plans.³¹ Such cursory review and lack of detail and analysis should not be accepted by the CNSC.

Recommendation

16. The inclusion of detailed decommissioning planning would directly further the objects of the CNSC pursuant to section 9 of the NSCA, specifically its role in preventing unreasonable risk to the environment and human health and achieving conformity with international obligations.

²⁹ CNSC Staff CMD, p 7

³⁰ IAEA, Decommissioning of Particle Accelerators (No. NW-T-2.9), p 2

³¹ CNSC Staff CMD, p 43

10. CONCLUSION & ORDER REQUESTED

Understanding KFN's Expectations

For over 7000 years the forest and waterways have provided Algonquin Anishinaabeg people their livelihood -food, energy and materials, landscapes, spiritual grounds, economic trade and peace of mind. The distinctive feature of Anishinaabeg society over this period was that resources were managed as sacred. The past 300 years Algonquins have witnessed the results of an exploitive management regime. Much of their traditional territory and livelihoods have been significantly degraded and many ecosystems have permanent or severe damage with numerous species are at risk and approaching threatened status. All the while Algonquin people have suffered disproportionate poverty.

KFN is interested in new models/institutions of decision making federally and provincially that respect meaningful interaction between proponents, authorities and affected Aboriginal communities in the environmental reviews and project licensing process.

KFN have specific legal rights that need to be reflected in licensing processes that does not treat our community as “just another stakeholder” but rather a constitutional partner to be consulted on a “nation-to-nation” basis.

The analysis of Article 32(2) of UNDRIP by former UN Rapporteur on Indigenous Rights, James Anaya, provides a better model for “good faith” process of consultation and collaboration that is envisioned internationally when States make decisions “affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources.” Comparing the language of UNDRIP to the language of ILO Convention No. 169, Mr. Anaya explains (emphasis added):

The somewhat different language of the Declaration suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more in the nature of mechanisms for providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.³²

Order Requested

For the foregoing reasons and rationale provided in this intervention, we request the CNSC issue an order:

³² Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, HRC, 12th Sess., UN Doc. A/HRC/12/34 (2009) at para. 46.

- (1) Granting Kebaowek First Nation the status of intervenor;
- (2) Granting Kebaowek the opportunity to make an oral presentation at the June 2021 hearing
- (3) Denying BWXT Medical's request for 10-year licence.

SUMMARY OF RECOMMENDATIONS

1. It is incumbent on the CNSC that before making this decision, there be collaboration to the furthest extent possible with Kebaowek and the Algonquin Anishinaabeg Nation to ensure decisions are made respectful of their law and practices and the free, prior and informed consent (FPIC) principle. Without the duty to consult being fulfilled, there isn't the requisite constitutional basis to proceed with this license.
2. If the CNSC is to discharge its duty to consult, the CNSC must demonstrate that Indigenous communities, including Kebaowek, were engaged in making a licensing decision, and it must be clear what was heard and how it factored into the license decision. Indeed, BWXT's Indigenous engagement plan was among the documents to which Kebaowek was denied access. To date, there has not been meaningful consultation with KFN necessary to allow the license to be granted.
3. UNDRIP must be a minimum framework for the relationship between Aboriginal peoples and the Canadian State and nuclear development decisions across Canada. CNSC engagement should better reflect Canada's commitments through international instruments like UNDRIP.
4. Reforming licensing assessment and the role of the Algonquin Anishinaabeg Nation in such assessment requires CNSC understanding that mutuality, respect and consultation are integral to Algonquin social and political organization on a number of levels: family- to-family, band-to-band, and nation-to nation. From an Algonquin Anishinaabeg perspective, the current CNSC process should be harmonized with that expectation providing adequate basis for developing 'real' Anishinaabeg nation-to nation relationships and supporting 'real' Algonquin Anishinaabeg institutions.
5. This requires reviewing other pieces of federal legislation such as but not limited to the Federal Comprehensive Claims Policy that support and/or create false entities and processes that further undermine 'real' Algonquin Anishinaabeg participation in environmental decision making.
6. KFN does not endorse, accept, or acknowledge any claims to any Aboriginal or Treaty Rights made by the Algonquins of Ontario ('AOO'). KFN does not recognize the AOO as an entity entitled to consultation or accommodation. To this end, CNSC and other federal authorities evaluating licensing projects pursuant to Canadian Constitution should restrict participation of the Algonquins of Ontario ('AOO') also known more appropriately as an ALGONQUIN OPPORTUNITY (NO.2) CORPORATION.³³

³³ Ontario Superior Court of Justice Court File no. CV_18-00603975-000 "*Chief Kirby Whiteduck on his own behalf of the ALGONQUINS, and the ALGONQUIN OPPORTUNITY (NO.2) CORPORATION.*

7. The CNSC provide a response in writing explaining how the federal Crown sought to address concerns which have been raised by Kebaowek. In the event we feel we have outstanding concerns, we retain the right to make submissions to the CNSC which shall be made publicly available and posted to the licensee and hearing project page managed by the CNSC.

8. At a minimum, any document referenced by the CNSC in its licensing hearings – which are purportedly open to the public – should also be public. Instead, the CNSC is enabling a hearing process where documents directly pertinent to our rights and our ability to meaningful review, are withheld. We encourage the CNSC to work with licensees to develop documents which by default, are available for the public.

9. Participant funding needs to be increased to allow meaningful Aboriginal participation in CNSC licensing reviews.

10. Aboriginal institutions require sufficient financial resources to build capacity to undertake nuclear project reviews properly. They require increased funding as they take on increased responsibility.

11. For emissions and discharges to soil, groundwater and air, please provide:

- Methods and frequency of monitoring and a comparison of these approaches to other Class 1B nuclear facilities
- Roles and responsibilities
- Post-operation monitoring requirements
- Plans showing the location of the proposed monitoring locations
- Plans showing the release points to air, land and water from the facility
- Anticipate rates of discharge
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12. As previously commented, there has been no outreach with Kebaowek to discuss our role in environmental monitoring or oversight. We therefore request the following licence specific changes be made and new conditions added:

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- b) BWXT Medical shall prepare and provide quarterly reports to Kebaowek with costs related to Kebaowek's understanding and responding to such reporting being covered by BWXT Medical.
- c) Require as a condition of licensing that BWXT Medical develop a community health study conducted by an independent expert, as agreed to by Kebaowek, with the costs of the health studies paid for by BWXT.
- d) Require as a condition of licensing that BWXT Medical shall incorporate into its emergency and public disclosure plans, that notice will be given to First Nations of adverse events, unintended releases to the environment, changes to licensing documents or programming with respect to environment, radiation and emergency protections.

13. The CNSC should not proceed with licensing until the licence application has been updated with an ERA from BWXT Medical which reflects changes in operation and production, and clearly delineates the roles and responsibility within the facility.

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- a) The CNSC should explain why a site rather than licensee-specific IEMP is relied upon. A licensee-specific IEMP should be required and the parameters the CNSC intends to monitor and the frequency of updates (given existing data dates to 2018) clearly set out in licensing documents and online. The CNSC should commit to updating the current IEMP program and website which currently excludes any mention of BWXT Medical.
- b) Indigenous involvement within the development of the IEMP should not be a post hoc licensing requirement. As a regulator which promotes itself as being "committed to reconciliation" and "collaboration among Indigenous groups,"³⁴ the CNSC should have provided opportunities for Kebaowek to provide input on the IEMP and provide meaningful results to our community. Further, we do not accept CNSC's approach to engagement wherein commitment for involvement comes after rather than precedes the licensing hearing.

15. The CNSC should set out in writing how it considered and complied with UNDRIP, specifically Article 29.2 in making the recommendation that this licence be granted for a period of 10 years and, expressly require that the FPIC principle be upheld.

16. The inclusion of detailed decommissioning planning would directly further the objects of the CNSC pursuant to section 9 of the NSCA, specifically its role in preventing unreasonable risk to the environment and human health and achieving conformity with international obligations.

³⁴ CNSC, "Remarks by President Rumina Velshi at the G4SR-2 Virtual Summit" (18 Nov 2020), online: <https://nuclearsafety.gc.ca/eng/resources/presentations/president-velshi-remarks-g4sr.cfm>