



**Final submission from the
Pontiac Environment Protection**

**Mémoire définitif de la Protection
environnementale de Pontiac**

In the Matter of the

À l'égard des

Canadian Nuclear Laboratories (CNL)

Laboratoires Nucléaires Canadiens (LNC)

Application from the CNL to amend its
Chalk River Laboratories site licence to
authorize the construction of a near surface
disposal facility

Demande des LNC visant à modifier le permis
du site des Laboratoires de Chalk River pour
autoriser la construction d'une installation de
gestion des déchets près de la surface

**Commission Public Hearing
Part 2**

**Audience publique de la Commission
Partie 2**

May and June 2022

Mai et juin 2022

Submission to the Canadian Nuclear Safety Commission on the Licensing Process
for Canadian Nuclear Laboratory's Proposed Near Surface Disposal Facility
at Chalk River
by Pontiac Environment Protection,
May 29, 2023

**(further to written submissions dated April 10, 2022 presented orally June 1, 2022
recorded as CMD 22-H7.69, File/Dossier 6.01.07, Edocs: 6757743)**

We submit the following in support of our written and oral submissions presented to the CNSC June 1st, 2022.

1. The written submissions of Kitigan Zibi Anishnaabeg and Kebaowek First Nations document the failings of the CNSC to engage appropriately and fully to obtain the Free, Prior and Informed Consent of First Nation peoples to decisions on the siting of the NSDF, the type of facility, and effects of the NSDF on traditional rights of First Peoples to access their traditional lands safely, to hunt and harvest the lands, and to steward the water and lands at the site--lands which were never ceded to the government of Canada or CNL. The CNSC has unduly restricted the terms of the consultation process--having acceded to any "communication" at all from these groups only in the last 8-10 months. Indigenous peoples have stated clearly that they were never previously or properly consulted over the siting of the waste facility, the type of facility and categories of waste intended for the site. CNL has also failed entirely to specify what measures they are prepared to take to keep high and medium level waste OUT of the dump, as opposed to trying to allow Low Level (LLW) and Medium Level (MLW) wastes into a facility suitable only for LLW according to IAEA regulations.

"Informed consent" means that those giving consent must have the technical understanding of what they are consenting to--including full disclosure by the proponent, CNL and the CNSC, adequate time and resources (professional and financial) to conduct their own research and provide their submissions and consent. The written submissions of the Algonquins of Kitigan Zibi and Kebaowek First Nations make it abundantly clear that they have **not** been afforded adequate time or resources to ensure meaningful consultation, and that the parameters of the consultation have been highly restrictive and therefore, entirely inadequate.

In their written submissions, the Kitigan Zibi Anishnaabeg and Kebaowek First Nations speak at length of all the capacity issues they experience as a result of Canada's endless programs of genocide and assimilation to explain why "Free", "Informed" and "Prior" consent are needed going forward, why this obligation is included in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and how Canada has committed to UNDRIP and thereby created a legal liability, as part of its

reconciliation effort with First Peoples. Any deficit in technical capacity is a direct result of Canada's racist colonial policies and so blame cannot be placed upon First Nations themselves. The CNSC has the obligation to comply with and respect UNDRIP and ensure meaningful consultation and the free, prior and informed consent of these First Peoples takes place before any decision is made.

The CNSC has not only attempted to bypass and dismiss the complete absence of meaningful consultation with Algonquin First Nations prior to June 2022 (i.e. on the creation of CNL, Chalk River laboratories and the NSDF): according to the Kitigan Zibi Anashnaabeg submissions, it *has gone so far as to assert that "the location and type of project is out of the scope of the CNSC's decision-making authority" which is patently false*. Significant failures in establishing an appropriate independent siting process and ensuring the selection of an appropriate facility compliant with IAEA standards for long-term storage of MLW have been repeatedly raised but always dismissed or diminished by CNL and the CNSC, yet these are fundamental aspects of international law and the CNSC's licensing process.

2. We support the First Nations' call to relocate the site away from the Kitchissippi River--the heart of their traditional territory, and their sacred sites at Oiseau Rock and Pointe de Baptême.

We also call upon the CNSC:

(i) to relocate the facility far from an important body of water to a suitable, safe site, including potential sites outside of CNL-controlled locations.

(ii) as Intermediate Level Waste is clearly intended to be included in the Waste facility, to require a different type of facility than the proposed NSDF or to impose a clear and unequivocal requirement that if an NSDF is approved, that the waste to be emplaced be strictly limited to low-level waste as it is internationally categorized, and that the CNSC specifically define what constitutes LLW, MLW and HLW in accordance with best practices established by the IAEA rather than leaving it to the industry to categorize and "self-regulate";

(iii) to establish a clear requirement/condition that no radionuclide with a life of more than 300 years be permitted in any NSDF facility which might be developed and licensed. (The claim by CNL that the membrane models designed for the NSDF will last 500 years stretches credibility, being unverifiable and unproven).

3. This is the first time in Canadian history in which a proposal to permanently abandon radioactive waste is being considered, and it is essential that the failings in the site and facility selection process be reviewed with consideration not only for the long term impacts and risks to people and the environment but also, that plans be established for long-term monitoring, maintenance, and possible relocation of the dangerous waste proposed for inclusion in the NSDF. We know as a society that we simply cannot guarantee safety over the thousands of years the waste will remain radioactive.

We urge the CNSC to put into place the kind of agreement reached with communities surrounding the Port Hope nuclear station to require that the waste NOT remain at the Chalk River site indefinitely. If this kind of agreement can be established for naturally occurring radioactive materials as was done in

Port Hope, it is more critical that such an arrangement be established for the storage and monitoring of a site intended for longer-term containment of nuclear waste with extensive half-lives.

4. *The mischaracterization of the types of waste being proposed for the NSDF (Intermediate level waste as low-level waste) is a significant concern which the CNSC has not yet addressed despite repeated and salient questions on their misclassification put to the CNSC by a majority of individuals and organizations. The CNSC must insist upon completion of the Waste Identification strategy prior to licensing any type of facility. It should adopt IAEA standards and insist upon their application to any proposed facility before licensing is considered and approved.*

5. *The manner in which the CNSC defers constantly to the CNL for answers to "technical" questions does not inspire confidence in the oversight role and independence of the CNSC nor its willingness to openly engage with concerned citizens and First Nations. As the CNSC is the only regulatory body in place to address critical safety concerns their reliance on the industry for advice and the development of the Nation's nuclear waste management strategies fails to meet applicable international standards and best practices.*

6. Tornados and high winds are a realistic and significant concern, especially during the 50-year period of waste emplacement. A similar (but mostly in-ground) facility for US military waste in Hanford, Washington has a major "dust control" challenge. *CNL is assuming that inhalation of radioactive particles by NSDF workers would be negligible. This is definitely NOT justified: alpha-emitting particles in the lung are a serious health risk.*

7. The Commission is widely viewed as primarily facilitative to the industry rather than regulatory (it has never refused to grant a licence¹). It thus fails to achieve the level of independence from industry needed for public confidence and social acceptability.

The CNSC (see paragraph #1 above) has shown itself unwilling to properly and impartially establish an appropriate site selection process and to insist on a facility appropriate for the *actual* radioactive levels of the intended waste, trusting instead in the magical thinking of the industry assuring the safety of the membranes and back-up systems when such trust is not warranted by historical reality. It downplays the very real environmental and human impacts of emplacement of an inadequate facility beside a significant body of water and abandonment after its intended 500 year-life span, and so fails to assure appropriate mitigation measures for these impacts. *For these reasons, we submit that the responsible thing for the CNSC to do if it sincerely wishes to serve the people of Canada, protect their safety and the environment, and truly respect the rights of First Nations, is to choose either:*

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<https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf>

(i) to address the submissions of concerned citizens and groups wanting stricter compliance with international standards and best practices by applying these fully to the licensing process at issue; or

(ii) to exercise the option provided under article 52 of the *Canadian Environmental Assessment Act*, 2012 to refer the critical decisions at hand to the Governor-in-council for determination as to whether those environmental and safety impacts are justified in the circumstances.

8. Finally, we support and repeat the call by Kebaowek First Nations for a **hybrid hearing instead of a strictly electronic hearing**, as is currently set for June 27, 2023, and ask that a hybrid hearing opportunity be extended to all the First Nations groups scheduled for hearing that day. Restricting their attendance in person fails to respect their ways and culture.