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Oral Presentation

**Written submission from the
Algonquins of Pikwakanagan
First Nation**

Exposé oral

**Mémoire des
Algonquins of Pikwakanagan
First Nation**

**Regulatory Oversight Report for
Uranium and Nuclear Substance
Processing Facilities in Canada: 2019**

**Rapport de surveillance
réglementaire des installations de
traitement de l'uranium et des
substances nucléaires au Canada :
2019**

Commission Meeting

Réunion de la Commission

December 8, 2020

Le 8 décembre 2020

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AOPFN Written Submission on
Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities
in Canada: 2019
Date Submitted: November 16, 2020

**CNSC Public meeting on the Regulatory Oversight
Report for Uranium and Nuclear Substance
Processing Facilities in Canada: 2019**

Public Meeting

Scheduled for:
December 8, 9 and 10, 2020

Regarding: Written Submission from Intervenors for CNSC Regulatory Oversight Report

Submitted by:
Intervenor – Algonquins of Pikwakanagan First Nation

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*Algonquins of Pikwakanagan
First Nation*

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1.0 Introduction

1.1 Background

Reason for Submission

The following provides Algonquins of Pikwakanagan First Nation's (AOPFN) comments on the *The Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2019* (the Report). AOPFN has received participant funding from the CNSC to prepare this written submission with technical support from the Firelight Group Research Inc. The following facilities discussed in Section 3.0 of the Report are located within the territory of the Algonquins of Pikwakanagan First Nation (AOPFN) and have the potential to directly impact the lands of the AOPFN:

- SRB Technologies (Canada) Inc. (SRBT) in Pembroke;
- Nordion (Canada) Inc. (Nordion) in Ottawa; and
- Best Theratronics Ltd. (BTL) In Ottawa.

AOPFN has Indigenous Knowledge and community insight relevant to the aforementioned projects, as well as interests in potential project impacts on their lands and is therefore seeking deeper engagement with the licensees and CNSC through this submission.

AOPFN has reviewed the Report and undertaken a deeper review of the following Report sections in preparation of this written submission:

- Section 3.0 Nuclear Substance Processing Facilities
- Section 4.0 CNSC Regulatory Oversight (including Performance ratings for the 14 safety and control areas discussed in the Report for the nuclear substance processing facilities)
- Section 6.3 Indigenous Consultation and Engagement
- Section 6.4 CNSC Independent Environmental Monitoring Program

This Written Submission is organized as follows:

1. Introduction
2. Nuclear Substance Processing Facilities
3. CNSC Regulatory Oversight and Indigenous Knowledge
4. Indigenous Consultation and Engagement
5. CNSC Monitoring Programs
6. Conclusions

AOPFN looks forward to receiving CNSC's response and reviewing other Intervenor's written submissions. AOPFN is planning to present oral testimony during the Public Meeting and expects that our presentation may be adapted, adjusted or may bring forward additional issues

and recommendations at the Public Meeting based on our review of any additional submissions as well as any meetings with CNSC and/or the Licensees.

Algonquins of Pikwakanagan First Nation

AOPFN represents the rights and interests of our First Nation members in our traditional territory. AOPFN is currently working towards negotiating a Final Land Claim Agreement/Settlement with the Ontario Provincial Government and the Canadian Federal Government, we remain mindful that regardless of any final outcomes of that effort, the AOPFN must be prepared to independently act in support of its members' interests and needs. As our First Nation community is a recognized band under the Indian Act it is our responsibility to act responsibly and take this obligation serious and therefore projects within the AOPFN territory require full direct engagement and accommodation of the AOPFN's rights.

AOPFN members are active harvesters across their territory, and rely on species including large land mammals, fish, and birds for both consumption and cultural use. AOPFN members are concerned about the Projects and their separate and combined long-term effects on the environment and on the resources that they rely on. It is critical to understand that the consent to build and operate these facilities within AOPFN territory was never sought. AOPFN is seeking greater participation and collaboration on facility activities with both the Licensees and CNSC going forward.

Summary of AOPFN Recommendations

1. AOPFN recommends that CNSC work with AOPFN and other indigenous groups to develop methods for the meaningful inclusion of Indigenous Knowledge in regulatory oversight processes.
2. AOPFN recommends that CNSC work with AOPFN to identify more frequent and funded engagement opportunities (including involvement of AOPFN Knowledge Keepers, AOPFN Advisory Committee members and AOPFN leadership) concerning nuclear substance processing facilities within AOPFN territory.
3. AOPFN recommends that CNSC work with Indigenous groups to improve transparency and methods for accessing funding for post-environmental assessment engagement activities such as monitoring.
4. AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement.
5. AOPFN recommends the reporting on Indigenous participation in the IEMP in all future regulatory oversight reports.
6. AOPFN recommends that CNSC further engage with AOPFN on funded opportunities for AOPFN participation in the IEMP.

7. AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring.

2.0 Nuclear Substance Processing Facilities

The following facilities discussed in Section 3.0 of the Report are located within the territory of the Algonquins of Pikwakanagan First Nation (AOPFN) and have the potential to directly impact the lands of the AOPFN:

- SRB Technologies (Canada) Inc. (SRBT) in Pembroke;
- Nordion (Canada) Inc. (Nordion) in Ottawa; and
- Best Theratronics Ltd. (BTL) In Ottawa.

Based on our initial review of the data provided in the Report and presentation prepared by CNSC Staff, it appears that the three facilities are meeting the standards set by CNSC for the protection of the health and safety of workers, the public and the environment. We understand that none of the lines of evidence considered by the CNSC identified any concerns with the facilities, however, we are concerned that the regulatory oversight process does not make steps to include or consider Indigenous Knowledge. That this is omitted from CNSC's regulatory review process is a critical concern for AOPFN and discussed further in the following Section 3.0.

3.0 CNSC Regulatory Oversight and Indigenous Knowledge

It is AOPFN's understanding that the rating of facility performance was based on, "CNSC staff expert professional judgement to rate performance based on multiple inputs, including:

- Key performance indicators
- Results of compliance verification activities
- Repeat instances of non-compliance
- Effectiveness of licensee corrective actions"¹

Neither the Report nor the presentation provided demonstrate evidence that Indigenous Knowledge was sought in the regulatory oversight of the facilities. The meaningful inclusion of Indigenous Knowledge in all stages of a Project lifecycle would improve the credibility and reliability of regulatory processes and regulatory reviews such as this for AOPFN members. We note that the 14 safety and control areas used to evaluate projects does not include steps for collecting and considering Indigenous Knowledge.²

¹ See CNSC Staff. 2020. E-DOCS-#6376097-v2-CMD_20-M36_A_-_Presentation from CNSC Staff – Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada, slide 10.

² CNSC. 2016. Safety and Control Areas. Available at: <http://www.nuclearsafety.gc.ca/eng/resources/publications/reports/powerindustry/safety-and-control-areas.cfm>

AOPFN understands that Canada recognizes the importance of Indigenous Knowledge for regulatory decisions as the 2019 Discussion paper: Indigenous Knowledge Policy Framework for Proposed Project Reviews and Regulatory Decisions states that:

“Indigenous knowledge improves federal decision- making and strengthens the rigour of project reviews and regulatory decisions. Indigenous knowledge enables federal organizations to have a more complete understanding of Indigenous world views, Indigenous cultures, the environment, and the social, health and economic conditions of Indigenous peoples” (p.2).³

We also note that another lifecycle regulator, the Canadian Energy Regulator (CER) is already taking steps to respect and improve their consideration of Indigenous Knowledge. In a recent news release the CER has acknowledged the importance of Indigenous Knowledge:

“The CER acknowledges the inseparable connection Indigenous peoples have with the land, air, water and the animals that call them home. The collection of Indigenous Knowledge is an important part of the CER’s adjudication processes as it recognizes and provides for the sharing of the unique cultures, knowledge and histories of Indigenous peoples” (para 4).⁴

In future, AOPFN would like to see greater effort by CNSC to seek, understand, and include consideration of Indigenous Knowledge in all regulatory decisions and reviews for Projects.

1. AOPFN recommends that CNSC work with AOPFN and other indigenous groups to develop methods for the meaningful inclusion of Indigenous Knowledge in regulatory oversight processes.

4.0 Indigenous Consultation and Engagement

AOPFN is encouraged by the opportunity provided through participant funding to participate in the review of the Report. We understand that CNSC is committed to meeting its consultation obligations and continues to build relationships with Indigenous peoples with interests in Canada’s nuclear processing facilities operating within their territory. However, additional opportunities for Indigenous involvement in regulatory processes exist.

³ Government of Canada. 2019. Discussion paper: Indigenous Knowledge Policy Framework for Proposed Project Reviews and Regulatory Decisions. Available at: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html>

⁴ Canadian Energy Regulator. July 2020. Oral Indigenous Knowledge provided to the Commission in virtual hearing as part of its consideration of the Trans Mountain Expansion Project detailed route hearings. Available at: <https://www.cer-rec.gc.ca/en/about/news-room/whats-new/2020/oral-indigenous-knowledge-provided-commission-in-virtual-hearing-as-part-its-consideration-trans-mountain-expansion-project-detailed-route-hearings.html>

4.1 CNSC Staff Engagement

AOPFN acknowledges and appreciates the engagement sessions conducted by CNSC In 2019, including meetings with CNSC staff held July 2019, August 2019, and November 2019. While AOPFN acknowledges CNSC Indigenous engagement efforts and overall efforts to build a relationship with our Nation, there are still concerns regarding the level of engagement and the funding capacity made available for engagement activities.

While communication efforts have improved, engagement activities by CNSC staff have not been consistent over-time in relation to these facilities. For example, AOPFN was not made aware of certain project activities being undertaken within its territory until only recently – late 2019. While the 2019 meetings with CNSC are a positive first step, deeper and more meaningful engagement is required. AOPFN is concerned that CNSC often makes decisions regarding projects within our territory without adequate consultation with the Nation. We note that our Free, Prior, and Informed Consent have not been sought in relation to these Projects.

2. AOPFN recommends that CNSC work with AOPFN to identify more frequent and funded engagement opportunities (including involvement of AOPFN Knowledge Keepers, AOP Advisory Committee members and AOPFN leadership) concerning nuclear substance processing facilities within AOPFN territory.

Funding capacity for engagement also remains a key area of concern. While the Participant Funding Program is usually available to help support Indigenous Participation in Hearings and Public Meetings, accessing funding for other engagement activities can prove difficult. AOPFN is seeking involvement and engagement during the entire lifecycle of Projects located in our territory which includes participation in monitoring and regulatory oversight. AOPFN does not have the capacity to pay for these kinds of activities out of pocket. Further, not all funding opportunities are openly communicated nor is it clear how much funding is available to be applied for. The need to seek and request additional funding can be a substantial burden on a First Nation already capacity constrained.

3. AOPFN recommends that CNSC work with Indigenous groups to improve transparency and methods for accessing funding for post-environmental assessment engagement activities such as monitoring

4.2 Licensee Engagement Activities

AOPFN is concerned about CNSC's approach for reviewing Licensee engagement with Indigenous groups. Based on our review of section 6.3.2 it appears that CNSC staff only confirmed that the licensees have Indigenous engagement and outreach programs and did not review or report on the implementation or success of those programs. Evaluation of Indigenous engagement needs to be strengthened as part of regulatory oversight.

4. AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement.

AOPFN acknowledges and appreciates recent engagement opportunities provided by the Proponents of the facilities reviewed in the Report, however, AOPFN is seeking improved engagement with all three Proponents. Better engagement for AOPFN would include the following:

- Increased engagement on Project operations and discussion of real benefits and opportunities for AOPFN members;
- Better effort to seek input on how AOPFN wants to be involved in the facilities and be open to collaborative input on engagement activities (e.g. rather than asking AOPFN about participation in a specific activity already planned e.g. fish sampling, ask early about all potential activities that AOPFN wants to be involved in);
- Provide the funding required for real and meaningful participation in engagement activities, including the provision of funding for Traditional Knowledge studies; and
- Provide adequate time to review and comment on Project related documents.

AOPFN looks forward to working with licensees to improve engagement efforts.

5.0 CNSC Monitoring Programs

AOPFN believes that monitoring inclusive of Indigenous groups is critical for both enforcement and compliance and for gauging the success of the implementation of measures. There are opportunities for greater participation by Indigenous groups in CNSC monitoring activities.

5.1 Independent Environmental Monitoring Program

The Report does not discuss AOPFN involvement nor Indigenous participation in CNSC's Independent Environmental Monitoring Program (IEMP). AOPFN would like to see discussion of Indigenous participation in the IEMP in future reports.

5. AOPFN recommends the reporting on Indigenous participation in the IEMP in all future regulatory oversight reports.

AOPFN understands that there may be future opportunities for AOPFN to collaborate and involve AOPFN Knowledge Keepers or AOPFN Advisory Committee in the Commission's Independent Environmental Monitoring Program. For clarity, for AOPFN, real participation involves activities beyond simply reviewing reports. AOPFN is seeking to discuss with CNSC funded opportunities for AOPFN Knowledge Keepers involvement AOPFN Advisory Committee in sampling and monitoring activities as part of CNSC's IEMP.

6. AOPFN recommends that CNSC further engage with AOPFN on funded opportunities for AOPFN participation in the IEMP.

5.2 Compliance and Verification Monitoring

The Report does not discuss AOPFN involvement nor Indigenous participation in CNSC's compliance and verification monitoring of the facilities. AOPFN believes there are real opportunities for Indigenous involvement in CNSC compliance and oversight activities. Providing funding for and working with Indigenous groups to develop roles for Indigenous monitors in CNSC monitoring would also support the improved consideration of Indigenous Knowledge in regulatory decisions (see Section 3.0).

AOPFN understands that the CER (another life-cycle regulator) has taken steps to include Indigenous monitors in compliance monitoring. The CER is committed to increasing Indigenous participation in their regulatory oversight of Canada's energy infrastructure through collaboration with Indigenous Advisory and Monitoring Committees (IAMCs) and through the involvement of Indigenous groups in compliance monitoring. The CER is also starting to introduce joint training sessions so that non-Indigenous CER Inspection Officers can learn from Indigenous Monitors.⁵

7. AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring.

6.0 Conclusions

AOPFN would like to see more opportunities for Indigenous involvement in CNSC regulatory oversight beyond reviewing reports. To address the concerns identified in this submission concerning Indigenous Knowledge, Indigenous Engagement, and Monitoring AOPFN recommends the following:

- 1. AOPFN recommends that CNSC work with AOPFN and other Indigenous groups to develop methods for the meaningful inclusion of Indigenous Knowledge in regulatory oversight processes.**
- 2. AOPFN recommends that CNSC work with AOPFN to identify more frequent and funded engagement opportunities (including involvement of AOPFN Knowledge Keepers, AOPFN Advisory Committee and AOPFN leadership) concerning nuclear substance processing facilities within AOPFN territory.**
- 3. AOPFN recommends that CNSC work with Indigenous groups to improve transparency and methods for accessing funding for post-environmental assessment engagement activities such as monitoring.**
- 4. AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement.**

⁵ Canadian Energy Regulator. September 2020. Indigenous Monitoring. Available at: <https://www.cer-rec.gc.ca/en/consultation-engagement/indigenous-engagement/indigenous-monitoring.html>

5. AOPFN recommends the reporting on Indigenous participation in the IEMP in all future regulatory oversight reports.

6. AOPFN recommends that CNSC further engage with AOPFN on funded opportunities for AOPFN participation in the IEMP.

7. AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring.

AOPFN looks forward to discussing our recommendations further at the Public Meeting in early December

References

- Canadian Nuclear Safety Commission (CNSC). 2016. Safety and Control Areas. Available at: <http://www.nuclearsafety.gc.ca/eng/resources/publications/reports/powerindustry/safety-and-control-areas.cfm>
- CNSC Staff. 2020a. Presentation - Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2019. E-DOCS-#6376097-v2-CMD_20-M3
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