



Procedural Direction

DIR 22-H7

In the Matter of

Canadian Nuclear Laboratories

Subject Application to amend the Nuclear Research and
Test Establishment Operating Licence for the
Chalk River Laboratories site to authorize the
construction of a Near Surface Disposal Facility

Date July 5, 2022

1.0 INTRODUCTION

1. Canadian Nuclear Laboratories (CNL) has applied to the Canadian Nuclear Safety Commission¹ for the amendment of its Nuclear Research and Test Establishment Operating Licence (NRTEOL) for Chalk River Laboratories (CRL). The CRL site is located in Deep River, Ontario, on the traditional unceded territory of the Algonquin Anishnaabeg peoples. The current operating licence, NRTEOL-01.00/2028, expires on March 31, 2028. CNL has applied for a licence amendment to authorize the construction of a Near Surface Disposal Facility (NSDF) for solid low-level radioactive waste at the CRL site.
2. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission over which she would preside, including Commission Members Dr. Marcel Lacroix and Ms. Indra Maharaj. The Commission considered information presented for a two-part public hearing held virtually on February 22, 2022 and from May 30 to June 3, 2022 in Pembroke, Ontario. The public hearing was conducted in accordance with the [Canadian Nuclear Safety Commission Rules of Procedure](#)² (the Rules). During the public hearing, the Commission considered written submissions and heard oral presentations from CNL and CNSC staff. The Commission also considered oral and written submissions from 165 intervenors, including Atomic Energy of Canada Limited (AECL), the owner of the CRL site, and 8 Indigenous Nations and communities. The hearing was webcast live via the CNSC website, and [video archives](#) will be available on the CNSC website.
3. As an agent of the Crown, the Commission recognizes its role in fulfilling the Crown's constitutional obligations, along with advancing reconciliation with Canada's Indigenous peoples. The Commission's responsibilities include the duty to consult and, where appropriate, accommodate Indigenous interests where the Crown contemplates conduct which may adversely impact potential or established Aboriginal³ or treaty rights⁴. The NSDF project has the potential to adversely impact potential or established Aboriginal or treaty rights. As such, the Commission must be satisfied that this constitutional duty to meaningfully consult is satisfied prior to making the required environmental assessment and licensing decisions with respect to the proposed NSDF.
4. In advance of Part 1 and Part 2 of the hearing, several Indigenous Nations and communities submitted requests for ruling, requesting that the Commission adjourn the proceedings for a minimum of 12 months, or until additional

¹ The *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² SOR/2000-211.

³ "Aboriginal" is the term used in this document when referring to the Crown's duty to consult as that is the term used in S. 35 of the Constitution Act, 1982. In all other cases, "Indigenous" is the preferred terminology and used accordingly.

⁴ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74

consultation work was completed. The Commission did not adjourn the hearing on the grounds that the public hearing forum could provide it with an opportunity to review and assess, in a fair and transparent manner, all of the evidence respecting the Indigenous consultation and engagement activities undertaken in respect of the NSDF project, and to hear from hearing participants directly on the issues before the Commission.

2.0 SUFFICIENCY OF AVAILABLE INFORMATION

5. In respect of two First Nations, Kebaowek First Nation and the Kitigan Zibi Anishinabeg, the Commission heard evidence and submissions that consultation efforts with respect to their rights and interests had been inadequate.
6. In section 9.3.1 of its *Environmental Assessment Report* (EA Report), provided in Appendix F of CNSC staff CMD 22-H7, CNSC staff described the methodology undertaken for the Rights Impact Assessment for the Algonquin First Nations in Quebec. CNSC staff identified two key pathways of potential rights impacts from the NSDF project: access and quality of experience of exercising Indigenous rights. As noted in the EA Report, “CNSC staff did not obtain reliable information about [quality of experience of exercising Indigenous rights] directly from the Algonquin Anishinabeg Nation Tribal Council” (p.140), therefore the analysis in the EA Report was conducted only with information that CNSC staff had available at that time.
7. In Part 2 of the hearing, the Commission heard directly from Kebaowek First Nation and the Kitigan Zibi Anishinabeg about their asserted rights, their view that the Crown had not fully identified the potential impacts to their rights and their view that they had not been adequately or meaningfully consulted on the NSDF project. They also expressed the view that the Algonquin Anishinabeg Nation Tribal Council did not represent their interests.
8. In respect of Kebaowek First Nation and the Kitigan Zibi Anishinabeg, the Commission wishes to allow more time, in order to receive further evidence and/or for more engagement and consultation to take place. This will inform the Commission’s considerations respecting the sufficiency of engagement and consultation efforts in respect of the Crown’s duty to consult.

3.0 DECISION

9. The Commission will not close the record for this proceeding at this time. The Commission is leaving the record open in order to accommodate the information that Kebaowek First Nation and the Kitigan Zibi Anishinabeg were not adequately consulted, at least in part because of confusion about the role of the Algonquin Anishinabeg Nation Tribal Council. This additional time is to allow for the Commission to receive further evidence and/or for more

engagement and consultation to take place in respect of Kebaowek First Nation and the Kitigan Zibi Anishinabeg.

10. The Commission heard good will and a clear intention on the part of Kebaowek First Nation and the Kitigan Zibi Anishinabeg to cooperate in good faith in the engagement and consultation opportunities offered by this regulatory process. The Commission heard a commitment from AECL and intention of CNL to engage and consult meaningfully, and heard the same from the CNSC staff, who have consistently offered to engage and to develop consultation agreements to build a collaborative relationship and trust. The Commission wishes to enable this expressed intention by the participants.
11. The Commission anticipates that there will be follow-up evidence and submissions from Kebaowek First Nation, the Kitigan Zibi Anishinabeg, AECL, CNL and CNSC staff in respect of further consultative efforts respecting the NSDF project.
12. The Commission finds that a reasonable time to leave the record open for this purpose would not extend beyond the 12-month period that was sought for the same purpose by Kebaowek First Nation and the Kitigan Zibi Anishinabeg, which would have been May 2023. The Commission finds January 31, 2023 to be a reasonable deadline for the filing of any additional evidence, submissions and information. The Commission Registrar will, in accordance with this procedural direction, schedule the steps for filing in due course.
13. The Commission notes that this procedural direction constitutes no ruling with respect to the environmental assessment or the licence amendment application. The Commission will await further evidence and submissions on consultative efforts respecting the NSDF before making decisions in respect of the consultation duty, the environmental assessment, and the licence amendment application.
14. This procedural direction allows for additional evidence and information on the subject of engagement and consultation to be filed subsequent to the close of Part 2 of the hearing on CNL's application to amend its licence, NRTEOL-01.00/2028, to authorize the construction of the proposed NSDF. As a result of leaving the record open, the time period for the written final submissions that are contemplated in the [*Revised Notice of Public Hearing including Procedural Guidance for Questions and Written Final Submissions*](#) will not commence until the new evidence and submissions are received. The Commission Registry will provide a notice advising intervenors who have registered for oral presentations of the timeline to submit final submissions in due course. Once the Commission decides that it has obtained all the information it requires, the record will be closed, and no further information will be considered. The Commission Registry will notify all hearing participants accordingly.

15. The deadline for the additional information on engagement and consultation to be filed is January 31, 2023. The Commission Registry will provide a notice with instructions for the filing of additional information in accordance with this procedural direction by September 30, 2022.

**Velshi,
Rumina**

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Rumina Velshi
President,
Canadian Nuclear Safety Commission

June 30, 2022

Date