

DRAFT RESOLUTION # 37/2023

AFN Annual General Assembly, July 11-13, 2023, Halifax, Nova Scotia

TITLE: Securing accountability of Nuclear Technology, Waste, Transport and Storage

SUBJECT: Water, Environment, Emergency Management

MOVED BY: Chief Lance Haymond, Kebaowek First Nation, QC

SECONDED BY: Chief Jeffery Copenace, Ojibways of Onigaming First Nation, ON

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
 - ii. Article 29 (2): 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.
 - iii. Article 32 (2): 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 or other resources.
- B. First Nations have been stewards of the land, waters and their environment since time immemorial, have an unbreakable and sacred connection to Mother Earth that considers the health, wellbeing and sustainability of all living things for seven generations into the future.
- C. First Nations disproportionately endure environmental inequality despite that, under the Canadian Charter of Rights and Freedoms, every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination, in particular, without discrimination based on race, national, or ethnic origin, colour, religion, sex, age or mental or physical disability,
- D. Studies have shown that the SMR nuclear fuel cycle may produce more chemically/physically reactive waste which could impact options for management and disposal of waste and could remain radioactive for up to hundreds of thousands of years.
- E. The technical and social challenges associated with the operation of nuclear technology, managing the radioactive waste they generate, and the inherent proliferation and environmental safety risks could impact First Nations rights and interests in perpetuity.

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- F. The Canadian Nuclear Safety Commission (CNSC) is the administrative body responsible for regulating nuclear energy in Canada. While CNSC policy reflects a number of established principles in Canadian law regarding the duty to consult and accommodate Indigenous Peoples, it does not fully account for recent developments in the law.
- G. Nuclear technology, including SMRs that operate in one province could have impacts on out-of-province First Nations as:
- i. There are current proposals in place to research, develop and manufacture fuels at the Canadian Nuclear Laboratories' site in Chalk River for a proposed SMR that will be located in New Brunswick.
 - ii. This will lead to radioactive material being transported throughout regions to support these activities.
 - iii. Spent nuclear fuel will need to be transported and eventually stored of, as all nuclear material eventually degrades into radioactive waste. According to data from Transport Canada, this could potentially impact 435 First Nations with grade level crossings and multiple provincial highways that go through First Nations territories.
 - iv. Spent nuclear fuel may be stored at a proposed deep geological repository (DGR) in Ontario, whereas, other radioactive waste, including research and decommissioned material, could be destined for the proposed Near Surface Disposal Facility at Chalk River (NSDF).
 - v. All of these proposed modes of transport for the movement or disposal of nuclear material presents a disproportionate increased risk of loss from accidents that may have generational negative impacts for First Nations.
- H. In order to accommodate one million cubic metres of legacy and imported spent nuclear fuel from Canadian Nuclear Laboratories, the CNSC is considering licensing a surface storage mound at Chalk River, Ontario. Algonquin Anishinaabeg Nation communities were not consulted on the site selection.
- I. The proposed Near Surface Waste Facility (NSDF) poses serious and irreversible impacts to Indigenous rights and the environment. The site is within 1 kilometer of the Kichi Zibi, on unceded and unsurrendered Algonquin Anishinaabeg Nation lands. The site is home to 37 hectares of old growth forest and abundant wildlife resources including Federal Species at Risk. Also within 2 kilometres are two sacred Indigenous sites, Pointe au Bapthème and Oiseau Rock, which have been associated with naming ceremonies, rock pictographs, and tobacco offerings for centuries.
- J. In light of the proximity of the proposed spent nuclear fuel landfill site to the watershed, Algonquin peoples and Canadian municipalities downstream have strongly objected to the development. If successful, the project may create disproportionate additional environmental impacts from existing and future nuclear waste operations at the site.
- K. The Kichi Zibi and surrounding lands and waterways have experienced cumulative toxic harm from nuclear accidents at the Chalk River site since 1952.

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- L. In March 2023, Natural Resources Canada released its final radioactive waste and decommissioning policy. The document ignores input provided from Indigenous nations and civil society over the course of the previous two years.
- M. Current federal laws remove many SMRs, their eventual decommissioning and waste products from mandatory federal impact assessment legislation, a process which serves to test a proponent's claims regarding safety, level of harm or impacts to the environment.
- N. The only institutional check for SMRs in Canada is the Canadian Nuclear Safety Commission. The Commission, whose oversight is provided by Natural Resources Canada, has lobbied for the removal of SMRs from impact assessment.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Call on the Government of Canada to fully adhere to the standards of the United Nations Declaration on the Rights of Indigenous Peoples, and the protections under the *Constitution Act*, 1982, where information on the nature, size, pace, reversibility and scope of any proposed nuclear project or expansion are transparently disclosed and where an assessment of likely economic, social, cultural and environmental impacts is provided to First Nations, sufficiently in advance of any commencement or authorization of a nuclear project or an expansion.
2. Call on federal, provincial, and territorial governments to ensure that no testing, development, expansion or deployment of nuclear activities, including SMRs, occur on or near First Nations territories or infringes on First Nations inherent jurisdiction without the free, prior, and informed consent of all First Nations whose lands, territories, and/or other resources may be affected, including via transportation of any spent nuclear fuel.
3. Call for an urgent meeting between the Assembly of First Nations (AFN) and the Government of Canada to address concerns regarding the consultation policy of the Canadian Nuclear Safety Commission as it relates to nuclear waste transport and disposal decision making including, but not limited to the Near Surface Disposal Facility at Chalk River (NSDF).
4. Direct the AFN to continue working with the Regions and Natural Resources Canada to develop a coordinated response to the new radioactive waste and decommissioning policy to include First Nations strategies and mitigation measures to fully conform with, and promote, the implementation of international human rights laws and standards.
5. Direct the AFN to explore avenues for "Eliminating Environmental Inequality" under Section 15 of the Canadian Charter of Rights and Freedoms with respect to consultation and policies related to the nuclear industry.