

By email

September 28, 2017

Canadian Nuclear Safety Commission

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To Commissioners and Commission staff,

Re: Public consultation concerning the proposed REGDOC-3.2.1

On August 15th, 2017, the Canadian Nuclear Safety Commission (CNSC) invited the public to comment on amendments it was proposing to RD/GD-99.3, a CNSC regulation that establishes the requirements for Canadian nuclear facilities' public information disclosure. Swim Drink Fish Canada/Lake Ontario Waterkeeper ("Waterkeeper") is submitting this letter to contribute analysis and recommendations concerning the proposed regulation as part of this public consultation process.

Waterkeeper is a grassroots environmental organization that uses research, education, and legal tools to protect and restore the public's right to swim, drink, and fish in Lake Ontario. The organization participates in legal processes to help ensure that environmental decisions are made on the basis of sound and tested scientific evidence by independent decision-makers and in the public interest. It is also a leader in public information-sharing and alerts systems, creating the international Swim Guide (an app that notifies members of the public about the water quality of local recreational beaches). Waterkeeper is also leading efforts to establish sewage bypass public alerts throughout Ontario.

Waterkeeper has become familiar with RD/GD-99.3 through its regular interventions before the CNSC. The regulation contains several important provisions to support the transparency and accountability of certain licensed nuclear facilities in Canada. The two proposed amendments to the regulation in REGDOC-3.2.1 may strengthen these objectives. However, Waterkeeper encourages further mandatory measures to be introduced to REGDOC-3.2.1 to better ensure the transparency and accountability of all regulated nuclear facilities and activities in Canada.

The importance of transparency and accountability in the nuclear industry

The *Nuclear Safety and Control Act* notes that the CNSC's objectives include "disseminat[ing] objective scientific, technical and regulatory information to

the public concerning the activities of the Commission and the effects on the environment... of the development, production, possession, and use” of nuclear substances and equipment (section 9(b)). The *Class 1 Nuclear Facilities Regulations* (section 3(j)), *Class II Nuclear Facilities and Prescribed Equipment Regulations* (section 3(r)), and the *Uranium Mines and Mills Regulations* (sections 3(c)(i) and 8(a)) all recognize the need for facilities to have programs to inform local communities of the potential effects of their activities on the local environment and human health.

Underlying these provisions is the recognition that individuals and communities have a right to know how operations at regulated nuclear facilities may impact them, including their health and their environment.

Robust public disclosure protocols at regulated nuclear facilities are a cornerstone of ensuring the industry’s transparency and accountability. They are an important way in which more trusting relationships can develop between industry and the public, not to mention an important way in which facilities can obtain social licenses to operate in communities. Licensees often claim the safe and responsible operation of their nuclear facilities. However, providing sufficient information to the public that supports these claims is vital.

Regular, proactive, and comprehensive public information-sharing also supports evidence-based and participatory decision-making processes. For example, proactive public disclosure will support informed interventions by members of the public and public interest organizations during Commission hearings and meetings. Available timeframes for interventions do not always allow for timely or adequate information disclosure. Furthermore, statutory access to information processes are often complicated and protracted, making them a challenging option for local community members or smaller non-profits who want information about how nuclear facilities may be impacting their communities.

Requiring more from licensed facilities in REGDOC-3.2.1 will be an important way to address these issues.

Recommended improvements to the proposed REGDOC-3.2.1

RG/DC-99.3 applies to Uranium mines and mills, Class I, and “certain” Class II nuclear facilities (section 1.2). The language concerning which Class II facilities are governed by the regulation is very broad: Class II facilities may not be required to have public information programs “depending on the size and nature of the nuclear materials and activities they engage in”. Hospitals and cancer treatment centres are completely exempt from the regulation.

The proposed REGDOC 3.2.1 changes the scope of this regulation’s application. While it still states that it applies to all uranium mines and mills and Class I nuclear facilities, the wording concerning Class II facilities has been amended: Class II facilities will only be governed by the regulation if their licenses require them to have public information and disclosure programs (section 2.1). The notice for this current public consultation opportunity explains that this amendment to section 2.1 of the regulation will effectively mean that hospitals are no longer exempted from the regulation. However, the language concerning Class II exemptions is still very broad, making it unclear how many Class II will be governed by this regulation, or exactly what criteria will be used to determine appropriate levels of public disclosure for these facilities on a case-by-case (or licence-by-licence) basis. Ultimately, it is important to note that the proposed amended regulation will still not apply to all licensed nuclear facilities in Canada.

Given the importance of nuclear facilities’ transparency and accountability, Waterkeeper submits this section of REGDOC-3.2.1 should be amended to require all licensed nuclear facilities and activities to have a public information program and disclosure protocol.

Recommendation 1: REGDOC-3.2.1 should apply to all nuclear facilities and activities requiring a CNSC licence.

REGDOC 3.2.1, like RG/DC-99.3, provides for a significant amount of discretion to be exercised by each licensed facility to determine which kinds of public disclosures to make.

Section 2.3.2 of REGDOC 3.2.1 (which remains unchanged from RG/DC-99.3) provides suggestions for what *may* be included in a public disclosure protocol. They include:

- a) significant operational developments such as labour disputes and expansion or changes in facility design or operation;
- b) events with offsite effects or which could result in public interest and concern or media attention;
- c) fires;
- d) impact of natural events such as earthquakes, floods, lightning;
- e) serious vehicle or industrial accidents;
- f) planned and unplanned significant interruptions of facility operations, such as disruption of isotope production;
- g) routine and non-routine releases of radiological and hazardous materials to the environment;
- h) unplanned events, including those exceeding regulatory limits; and
- i) environmental monitoring reports.

However, none of these provisions are mandatory according to either RG/DC-99.3 or REGDOC 3.2.1.

REGDOC-3.2.1 adds a new provision (section 2.2.4) to the regulation requiring facilities to post their environmental risk assessments and/or probabilistic safety assessments on their respective websites. Unlike the guidelines in section 2.3.2 above, the new requirements in section 2.2.4 are mandatory. The objective of this new section is to further “provide open and transparent means and access for the public to obtain desired operational, environmental and safety information about the licensed facility or activities”.

Waterkeeper commends the CNSC for the introduction of this new requirement. At the same time, further mandatory requirements for the content of public information programs and disclosure protocols should be added to the regulation. More specifically, Waterkeeper submits that the suggested content already included in section 2.3.2 should be made mandatory. Facilities should also be required to publicly disclose their annual compliance reports submitted to the CNSC.

Recommendation 2: REGDOC-3.2.1 should make the following types of disclosure mandatory for all licensed facilities:

- a) significant operational developments such as labour disputes and expansion or changes in facility design or operation;**
- b) events with offsite effects or which could result in public interest and concern or media attention;**
- c) fires;**
- d) impact of natural events such as earthquakes, floods, lightning;**
- e) serious vehicle or industrial accidents;**

- f) **planned and unplanned significant interruptions of facility operations, such as disruption of isotope production;**
- g) **routine and non-routine releases of radiological and hazardous materials to the environment;**
- h) **unplanned events, including those exceeding regulatory limits;**
- i) **environmental monitoring reports; and**
- j) **facilities' annual compliance reports.**

Furthermore, Waterkeeper submits that facilities should be required to notify the public in a timely manner (i.e. as soon as practicable) of the estimated volumes and concentrations of planned and unplanned releases. This information should be accompanied by references to applicable Action Levels as well as licence and regulatory limits, so that members of the public can better understand each event's severity.

Usually when reports are shared with the public concerning unplanned events at regulated nuclear facilities, they contain assertions that the events are not expected to have significant impacts on the environment or human health. However, these assertions are rarely supported by the disclosure of any monitoring results or other data. In order to better promote transparency and accountability of these facilities, the evidentiary basis for these assertions must be made publicly available.

Recommendation 3: facilities should be required by REGDOC-3.2.1 to notify the public in a timely manner of the estimated volumes and concentrations of planned and unplanned releases. This information should be accompanied by applicable Action Levels as well as licence and regulatory limits.

Finally, Waterkeeper has long been advocating for the CNSC to ensure better data sharing with the public more generally. While ERAs and annual compliance reports can contain some averaged environmental monitoring data, such data still only tells a limited story about facilities' potential environmental impacts. Disaggregated data, whether the results of bi-annual, quarterly, or monthly environmental sampling, provides members of the public and public interest organizations with a fuller understanding of the environmental performance of nuclear facilities. While this has been done to a limited extent via the Independent Environmental Monitoring Program (IEMP), much more work in this area is required.

The federal government has committed to strengthening its Open Data initiatives, based on the understanding that public access to government data creates greater transparency and accountability of government, as well as increasing citizen engagement (see open.canada.ca). The CNSC should support this important initiative by encouraging nuclear facilities to regularly release more of the results of environmental monitoring activities as disaggregated data.

Recommendation 4: REGDOC-3.2.1 should encourage facilities to regularly and proactively release the disaggregated results of environmental monitoring activities.