



July 30, 2014

Mr. Brian Torrie
Director General
Regulation Policy Directorate
Canadian Nuclear Safety Commission
280 Slater Street
Ottawa ON K1P 5S9

Canadian Nuclear Association Comments on RegDoc-2.9.1, Environmental Assessments

The Canadian Nuclear Association (CNA) has approximately 100 member companies, representing over 60,000 Canadians employed directly, or indirectly, in exploring and mining uranium, generating electricity, and advancing nuclear medicine [1]. The members of the CNA are committed to ensuring safety throughout all aspects of our industry, and to responsible environmental stewardship.

The Canadian Nuclear Association has reviewed RegDoc-2.9.1 (the “RegDoc”) in consultation with our members and has several comments that are critically important for the nuclear industry.

General Comments Concerning the RegDoc

The CNA does not understand the policy rationale for this RegDoc, which appears to restore processes that had been removed from the *Canadian Environmental Assessment Act, 1992* (CEAA 1992) [2]. Restoring these processes under the authority of the *Nuclear Safety and Control Act* would not align with the intent of the 2012 CEAA amendments. We understood that the government, in making these amendments, wanted to modernize the regulatory system and allow for responsible and timely natural resources development that would benefit Canadians [3]. Reintroducing environmental assessments for low-risk projects could sufficiently raise project costs beyond the point of economic viability.

The nuclear industry fully recognizes that licence applicants must provide adequately for environmental protection. In the RegDoc, the CNSC should clearly define and describe the material required from applicants, and clearly articulate its proposed process. The RegDoc should also clearly specify which projects and licensees are subject to its guidance under Part A. We note that the requirements in Part B are covered by CEAA 2012 [3].

As well, the CNSC should conduct a full cost-benefit analysis of what amounts to regulation prior to it being formalized and issued for public consultation.

Given our members’ substantive concerns, and what appears to be a new CNSC policy rationale, the CNA suggests that a workshop would provide an opportunity to discuss these issues with CNSC staff.



Comments Specific to Part A

Part A of the RegDoc would require an environmental review for a class of projects not otherwise covered by CEAA 2012 [3]. If a regulatory gap existed that would exempt these projects from review, then the RegDoc's approach would have merit. However, there is no such regulatory gap. Existing project works and activities are addressed by the Environmental Management Systems stipulated in CNSC's RegDoc 2.9.1, *Environmental Protection Policies*, which assess the potential for environmental effects on an ongoing basis [4].

The CNSC should justify the need to impose reviews for those projects not subject to CEAA 2012. It is not clear that a new, separate environmental assessment process would provide a superior alternative to the processes associated with the *Regulations Amending the Regulations Designating Physical Activities* [5].

Moreover, it bears mention that the Standing Committee, in reviewing CEAA, recommended a focus on high-significance projects rather than applying an "all-in unless excluded" approach. [6] As the committee stated:

"Recommendation 10. The Committee recommends that the Canadian Environmental Assessment Agency focus the application of the Canadian Environmental Assessment Act on projects of environmental significance.

"Recommendation 11. The Committee recommends that the federal government modify the Canadian Environmental Assessment Act so that assessments under the Act are triggered via a project list instead of the current "all in unless excluded" approach taken by the Act."

The statement, "The EA under the NSCA is a component of the CNSC licensing process (see Appendix A) and is carried out as part of the CNSC's review of all licence applications," greatly expands the number of projects that would be subject to environmental review.

In 2007, the cabinet directed the government to reduce red tape:

"The federal government will require timelines, policy coherence and minimal duplications throughout the regulatory process by consulting, coordinating, and co-operating across the federal government, with other governments in Canada and abroad, and with business and Canadians." [7]

However, the RegDoc appears to duplicate regulations and processes that had been removed through the CEAA 2012 amendments. As the RegDoc states: "If an EA under the CEAA 2012 is not required, the applicant must still meet CNSC licensing requirements, including an EA under the NSCA." This effectively reintroduces the assessment process for low-risk projects, contravening parliamentary intent.

CNSC staff state in the RegDoc that:

"The CEAA 2012 does not lessen the CNSC's environmental assessment or protection mandate, but rather recognizes its existing robust regulatory framework for environmental protection along with its ability and capacity to conduct EAs."



The CNA notes that CEAA 2012 did not amplify the CNSC's environmental assessment or protection mandate.

Comments Specific to Part B

Part B of this RegDoc proposes guidance on public participation in the CNSC EA process (Table 3). However the CNSC already provides guidance on public outreach [8], and on communications with Aboriginal communities [9, 10]. As well, the Canadian Environmental Assessment Agency also provides specific guidance on considering Aboriginal traditional knowledge in Environmental Assessments conducted under CEAA 2012 [11]. The CNA believes the RegDoc should refer to these documents rather than introduce new guidance.

The RegDoc, in Appendix D, proposes that CNSC-led activities will be determined within timelines that range from 272 to 730 days. As CEAA, 2012 provides the mandate for the CNSC to conduct EAs under part B of this RegDoc, the timelines should be consistent for all projects undergoing an EA under CEAA, 2012, regardless of whether the responsible authority is the Agency or the CNSC. The CNA has already communicated this point to CNSC staff [12]. Additionally, the CNA recommends that the CNSC conduct any environmental assessment under the existing guidance provided by the Canadian Environmental Assessment Agency under CEAA 2012 [13-17].

Beyond these two points about communications and timelines, the CNA has several specific comments that appear below in Appendix A.

Conclusions

The issues raised in this letter are of significant concern to our members. In our view, the process and requirements described in Part A of the draft RegDoc are not required; that section should be removed. Our members do see benefit in a RegDoc that provides clarity to licensees when developing their licensing submissions. The CNA and its members would appreciate the CNSC staff hosting a workshop where such issues could be discussed among all interested parties.

We appreciate the opportunity to review the proposed RegDoc, and thank you for seeking feedback through the public comment process. If you or your staff require further clarification on any of the above information, please do not hesitate to contact me at 613-237-4262.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Poruks', is written over a horizontal blue line.

Dr. Peter Poruks
Manager of Regulatory Affairs
Canadian Nuclear Association

Cc.

Dr. John Barrett, President, Canadian Nuclear Association
Heather Kleb, M.Sc., Vice President, Canadian Nuclear Association

References

- [1] Canadian Manufacturers and Exporters, 2012, *Nuclear, A Canadian Strategy for Energy, Jobs and Innovation* 2012 September presentation deck.
- [2] *Canadian Environmental Assessment Act*, S.C. 1992, c. 37.
- [3] *Canadian Environmental Assessment Act*, 2012.
- [4] Canadian Nuclear Safety Commission, *Environmental Protection: Environmental Protection Policies, Programs and Procedures*, RegDoc-2.9.1.
- [5] *Regulations Designating Physical Activities*, SOR/2012-147.
- [6] M. Warawa, M.P., Chair, *Statutory Review of the Canadian Environmental Assessment Act: Protecting the Environment, Managing Our Resources*, Report of the Standing Committee on Environment and Sustainable Development, 2012 March.
- [7] Treasury Board of Canada Secretariat, *Cabinet Directive on Streamlining Regulation*, BT22-110/2007, 2007.
- [8] Canadian Nuclear Safety Commission, *Public Information and Disclosure*, RD/GD-99.3, 2012 March.
- [9] Canadian Nuclear Safety Commission, *Codification of Current Practice: Commitment to Aboriginal Consultation*, 2011 August.
- [10] Government of Canada, *Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, 2011 March.
- [11] Canadian Environmental Assessment Agency, *Reference Guide: Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act*, 2012, 2013 November.
- [12] H. Kleb, Letter to M. Binder, 2013 February 5.
- [13] Canadian Environmental Assessment Agency, *Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act*, Operational Policy Statement, 2013 May.
- [14] Canadian Environmental Assessment Agency, *Addressing “Purpose of” and “Alternative Means” under the Canadian Environmental Assessment Act*, Operational Policy Statement, 2012 December.
- [15] Canadian Environmental Assessment Agency, *Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act 2012*, 2014 June.
- [16] Canadian Environmental Assessment Agency, *Technical Guidance for Assessing Physical and Cultural Heritage or any Structure, Site or Thing that is of Historical, Archeological, Paleontological or Architectural Significance under the Canadian Environmental Assessment Act 2012*, 2014 May.
- [17] Canadian Environmental Assessment Agency, *Practitioners Glossary for the Environmental Assessment of Designated Projects Under the Canadian Environmental Assessment Act 2012*, 2013 September.
- [18] Government of Canada, 2012. *Responsible Resource Development: Jobs, Growth and Long-term Prosperity, Economic Action Plan 2012*, see website http://actionplan.gc.ca/grfx/R2D/R2D_in_brief_ENG.pdf.

Attachment A: Detailed Comments on RegDoc-2.9.1, Environmental Assessments

- The list of legislation, regulations and standards in Section 2.1 does not include the *Canadian Environmental Assessment Act* or its regulations. These should be included in the discussion in Section 2.1.
- The companion CNSC RegDoc-2.9.1, *Environmental Protection Programs, Policies and Procedures*, should be cited in Section 2.1 and considered in the discussion concerning the ongoing monitoring and management of potential environmental effects.
- Given the accumulated base of knowledge and guidance, the establishment of new EA deliverables such as an “EA Conclusion Summary” and an “EA Conclusion Report” are superfluous.
- The licensees subject to a RegDoc are typically defined in the “Purpose” section of the document. This practice should be included in the RegDoc.
- The wording in Section 5.3 (page 8) should be changed from “Since EAs **can be** used as planning tools” to “Since EAs **are** used as planning tools”.
- Section 5.4 (page 8) refers to “potential or established Aboriginal or treaty rights.” The term “treaty rights” should be defined in the RegDoc.
- The steps and process outlined in Part B of the RegDoc are documented elsewhere, primarily in the *Canadian Environmental Assessment Act*. The RegDoc should invoke these CEAA requirements rather than duplicate them, which would create the possibility of inconsistencies and confusion.
- The timelines provided in Appendix D of this RegDoc should conform to guidance provided by the federal governments in the *Jobs and Long-Term Prosperity Act* [18]. This plan calls for “fixed beginning-to-end-timelines” of: 24 months for Panel Reviews, 18 months for National Energy Board Reviews, and 12 months (365 days) for Standard Environmental Assessments.