



NUCLEAR WASTE SOCIÉTÉ DE GESTION
MANAGEMENT DES DÉCHETS
ORGANIZATION NUCLÉAIRES

ADMINISTRATION

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REFERRED TO RÉFÉRÉ À	Torrie, B

MR. BRIAN TORRIE

Director General
Regulatory Policy Directorate
Canadian Nuclear Safety Commission
P.O. Box 1046, Station B
280 Slater Street
Ottawa, Ontario
K1P 5S9



Dear Mr. Torrie:

**NWMO Comments on CNSC Draft REGDOC 2.9.1, Environmental Protection:
Environmental Assessments**

The purpose of this letter is to provide NWMO comments on the CNSC draft document, REGDOC 2.9.1, Environmental Protection: Environmental Assessments.

NWMO's detailed comments on the draft REGDOC 2.9.1 are attached.

Please direct any questions to Ms. Lisa Lang, Senior Advisor, Regulatory Affairs, at (647) 259-4870.

Sincerely,

Nicole Hunt
for

Paul Gierszewski
Director, Safety & Licensing

Attach.

cc. D. Howard – CNSC (Ottawa)
consultation@cnscccsn.gc.ca

ATTACHMENT

Attachment to NWMO letter from Paul Gierszewski, "NWMO Comments on CNSC Draft
REGDOC 2.9.1, Environmental Protection: Environmental Assessments"

July 30, 2014

NWMO File Number: NWMO-CORR-00531-0009

**NWMO Comments on CNSC Draft REGDOC-2.9.1, Environmental Protection: Environmental
Assessments**

NWMO Comments on CNSC Draft REGDOC-2.9.1, Environmental Protection: Environmental Assessments

#	Applicable Section, Page	Comment	Proposed Change
1.	Preface	While the discussion of "participation opportunities (Step 2)" on environmental assessments under NSCA includes aboriginal participation, it does not recognize the "duty to consult" for projects under NSCA. It is acknowledged that the duty to consult is included in the criteria for determining participation opportunities for Public and Aboriginal interest.	It is suggested that the Preface include an additional paragraph recognizing the duty of the Crown to consult with potentially affected Aboriginal peoples on all projects regardless of whether CEAA 2012 applies and further recognizing that the environmental assessment process itself is an important source of information in support of the Crown's duty to consult consistent with CEAA 2012, s. 5, and the Updated Guidelines For Federal Officials To Fulfill The Duty To Consult, May 2011.
2.	General	<p>It is acknowledged that the Preface includes information on environmental assessment requirements under NSCA and CEAA. However, the structure of the document could be improved by adding a section ahead of Part A that describes how the document is to be used, and introduces the EA under the NSCA versus the CEAA.</p> <p>Some consideration could also be given to have the first 3 steps of the process (up to the EA determination) common to both, recognizing some aspects for preparing the project description under CEAA.</p> <p>Following the EA determination, either Part A or Part B of the document is used to conduct the EA.</p>	Add a section ahead of Part A or move information from the Preface to set the context for this document and describe at a minimum how it should be used.
3.	General	The document should be clear on who is responsible for completing each of the steps in the process (i.e., actions in Tables 1 & 2 describing the steps of the EAs under NSCA and CEAA 2012 respectively). For example, steps 1 and 2 clearly state that the applicant completes these actions whereas step 3 does not. In some cases, the description also includes "typically delegated to..."	Add a column to Tables 1 and 2 to identify who is responsible for each step.
4.	Sec. 2, p.1	Section 2 should clearly state that Part A of this document applies to projects that are not designated under CEAA 2012. If the structure of the document is changed as described in Comment # 2, then this point would be addressed by that change.	Add a statement in Section 2 that states that "Part A of this document applies to projects that are not designated under CEAA 2012 in the Regulations Designating Physical Activities or by Minister's order."

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5.	Sec. 2, p.2	The most up-to-date revisions of the relevant standards should be included in the REGDOC. For example, a new revision of the CSA N288.1 has recently been issued. Note same comment applies to the list of standards provided under "Additional Information" on p.34.	Update the CSA N288.1 revision.
6.	Sec. 3, Table 1 (title), p.3	Editorial: All EAs are conducted by the CNSC, whether under NSCA or CEAA, though some parts may be delegated to another party.	Revise title to "Key steps in the environmental assessment conducted by the CNSC <i>under NSCA</i> ". The addition to the title is consistent with the title of Table 2 and distinguishes between the two processes.
7.	Sec. 3, Step 1, bullet 3, p.3	Editorial: Clarification should be added to the 3 rd bullet in Step 1 with respect to the EA process to be followed.	Change the third bullet to: "understand the CNSC's licensing (including EA <i>under NSCA</i> vs. <i>CEAA 2012</i>) process"
8.	Sec. 3, Step 3, p.3-4 (Also applies to Sec. 6, Step 6)	This step describes the CNSC participation requirements, which is completed in addition to any engagement that the project proponent undertakes.	To improve clarity, it is suggested that a sentence be added to clarify that the statement applies to CNSC participation opportunities which are in addition to engagement undertaken by the proponent.
9.	Sec. 3, Step 8, 3 rd para, p.5	This step refers to using a number of EA criteria in Appendix B for evaluating "the determination of the need and scope of the EA Conclusion Report". It is noted that Appendix B lists a number of EA criteria in Table 7 to be used earlier in the process, that is for determining public participation in the EA process. It is unclear on how the criteria in this table will be used for the EA Conclusion Report or for any other assessment.	
10.	Sec. 3, Step 8, 3 rd para, p.5	Editorial: To improve clarity, delete "the determination of" from the 3 rd para.	Change to "The EA criteria, described in Appendix B, may also be evaluated to support the determination of the need for and scope of the EA Conclusion Report.

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11.	Sec. 5, 3 rd para, p.7	<p>The second sentence of this paragraph notes that: <i>"Should the Commission determine that a designated project is not likely to cause significant adverse environmental effects in accordance with subsection 52(1) of the CEAA 2012, the Commission, in accordance with section 53, must establish through the licensing process, the mitigation measures and follow-up activities the applicant of the proposed project must take."</i></p> <p>In accordance with subsection 52(1) of CEAA 2012, <i>"the decision maker [...] must decide if, taking into account the implementation of any measures that the decision maker considers appropriate, the designated project..."</i></p> <p>The decision maker would therefore make the determination of the impact of the project, taking into account appropriate mitigation measures.</p>	The sentence should be revised to clearly indicate that the determination of the environmental impact will be made taking into account appropriate mitigation measures, in accordance with subsection 52(1) of CEAA 2012.
12.	Sec. 5.3.2, last sent., p.8	<p>The last sentence notes: <i>"Should significant time lapse between the EA decision and the submission of the corresponding licence application, CNSC staff may require the applicant to update the EA to take into consideration new science, changes in the environment and any new technology."</i></p> <p>It seems that the update of the EA by the applicant referred to above would occur after an EA decision is made and before the licensing process is initiated. At which point, the licensing process would address any new changes in technology, science, etc. Therefore, it is unclear how an EA would be updated after the EA decision has already been made.</p>	Suggest deleting this last sentence since it is not clear that an EA process can be reopened after the decision statement is issued and in any event, these items could be adequately addressed in the licensing process that follows the EA decision.
13.	Sec. 6, last 2 paras, p.10	The role of the MPMO in the EA process conducted by the CNSC is unclear. Please clarify under what steps of the EA process the MPMO would be involved, and when a project agreement might be required.	
14.	Sec. 6, Step 3, 1 st para, p.11	<p>A few clarifications should be included in the description of this step regarding the CNSC EA determination memorandum:</p> <ol style="list-style-type: none"> 1. Will the report be made available on the CNSC website? 2. Will the report require acceptance by the Commission? 	
15.	Sec. 6, Step 7, p.14	Editorial: The text refers to "EA timelines presented in Appendix A". Currently the timelines are in Appendix D.	Revise to "Appendix D".
16.	Sec. 6, Step 7, p.14	This step should specify the total duration of time for CNSC review conducted under CEAA 2012. In addition, more context should be added on the last line of the table in Appendix D, clarifying the duration of the CNSC review.	

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17.	Sec. 6, Step 8, p.14	<p>Please clarify the scope of the "EA guidelines" document referred to by this step. If different from the "EIS guidelines" document referred to by the CEAA in the Agency's EA process, please provide the definition of the "EA guidelines".</p> <p>Further, the EIS (Environmental Impact Statement) is mentioned for the first time in para 3 of this step, without any context and link to the "EA guidelines". CEAA 2012 uses the term "environmental assessment" rather than "environmental impact statement."</p>	
18.	Sec. 6, Step 8, para 3, p.14	<p>The first sentence notes: <i>"If the environmental impact statement (EIS) and supporting technical studies have already been completed and the CNSC deems that project-specific EA guidelines are not required, the process may advance to step 11, initiating the technical review of the applicant submissions."</i></p> <p>The need for EA guidelines is determined in step 1. The sentence above needs to be revised, as it implies that this would be done later.</p>	Revise to <i>"If the environmental impact statement (EIS) and supporting technical studies have already been completed and the CNSC deems that project-specific EA guidelines are not required <u>as determined in Step 1</u>, the process may advance to step 11, initiating the technical review of the applicant submissions."</i>
19.	Sec. 6, Step 13, 2 nd para, p.17	The notice of the hearing should be posted on both the CNSC website and the CEAR.	Add "and CEAR" to "... is posted on the CNSC Web site..."
20.	Sec. 6, Step 13, 2 nd para, p.17	The title of Step 13 is currently "Commission hearing on the EA report", whereas the last sentence of para 2 indicates that interested parties would send "comments on the EA". Please clarify the scope of the hearing.	
21.	App. A, Fig. 1, p.19 (also App. C, Fig. 2, p.28)	<p>Figure 1 seems to indicate that there could be public and Aboriginal groups interventions at CNSC public meetings. As noted on CNSC's website, "meetings are usually open for public attendance, but for observation instead of participation."</p> <p>Note: same comment applies to both flowcharts in App. C, Fig. 2.</p>	Revise the figure to clarify the opportunity for public/Aboriginal groups participation at CNSC public meetings.
22.	App. B, Title	The Appendix is titled "Criteria for Determining Public Participation" however, the purpose described in the appendix is much broader, including guidance in making the EA determination.	It is suggested that the Appendix title, purpose, criteria and process be aligned.
23.	App. B, Table 7	It is unclear how the criteria listed in Table 7 in Appendix B on "Criteria for Determining Public Participation" will be assessed. For example, criterion 2 assesses whether the direct and indirect environmental effects of the project are understood. It does not indicate understood by who (e.g., the public, the applicant, CNSC) and how this relates to determining public participation.	Clarify the criteria in Table 7 and how they are used in the EA process.

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24.	App. C, Fig. 2, Integrated EA and Licensing Process, p.28	The EA and licensing decision appear to be a single step, while the CEAA requires a decision on the EA prior to issuing a licence as discussed in the text preceding the table.	Separate the EA decision from the Licensing decision in the figure.
25.	App. D, Table 4, p.29	<p>The timelines in Table 4 are difficult to follow, as the table does not clearly indicate whether any of the activities under various steps are to be performed in parallel. A figure (similarly to the figure posted on the CEAA website) showing the timelines for the EA process would be very helpful to understand the sequence of steps. In addition, a note regarding the "stop clock" should be added.</p> <p>In addition, it is noted that the duration of preparing the EA guidelines shown in Table 4 is 15-45 days. The duration of this step should be 0-45 days, to acknowledge the scenario when EA guidelines are not required (already determined in Step 1).</p>	Add a figure showing the timelines for the EA process.
26.	Glossary, p.31	<p>The Background indicates that the purpose is to make adequate provisions for the protection of the environment, and the health and safety of persons however the document does not include a definition of what is included in the environment.</p> <p>Further, this document refers to "direct and indirect environmental effects" and provides the definitions of "direct effect" and "indirect effect" without providing a definition for the "environmental effect".</p>	Add to the glossary the definitions of "environment" and "environmental effect", with respect to what is to be considered in environmental assessments under NSCA. Definitions should be consistent with those provided in the CNSC REGDOC-2.9.1, Environmental Protection: Environmental Protection Policies, Programs and Procedures.
27.	References, Item 4, p.33	The list of references should note that some regulations were amended after their first issuance, for example the Regulations Designating Physical Activities were amended in 2013. The current regulations have significant differences from the previous version.	Review and update all references as required.