

July 30, 2014

CD#: N-CORR-00531-06628

MR. BRIAN TORRIE
Director General
Regulatory Policy Directorate

Canadian Nuclear Safety Commission
280 Slater Street
Ottawa, Ontario K1P 5S9

Dear Mr. Torrie:

OPG Comments on Draft REGDOC-2.9.1, Environmental Protection: Environmental Assessments

The purpose of this letter is to provide Ontario Power Generation (OPG) comments on Draft REGDOC-2.9.1, Environmental Protection: Environmental Assessments. OPG appreciates the opportunity to provide comments during the development of this regulatory document, and hopes that OPG will have further opportunity to comment, as we have significant concerns with some aspects of this draft document.

OPG fully accepts responsibility to make adequate provision to protect the environment from impacts arising from our licensed activities and acknowledges that environmental studies demonstrating the environmental effects that have occurred and are predicted to occur in the future are required as part of our licence application submissions. However, OPG is concerned that Part A of this draft document introduces significant uncertainty in the licensing process as a result of the potential differences between the environmental assessment process under the Canadian Environmental Assessment Act (CEAA) 2012 and the requirements of the Nuclear Safety and Control Act (NSCA). For example, it is not clear whether the general limitation to components of the environment that are within the legislative authority of Parliament in CEAA 2012 is meant to be applied to an application under the NSCA. The term NSCA Environmental Assessment is of particular concern due to the confusion that it introduces as to the applicability of CEAA 2012, for example the definitions and assessment criterion. OPG suggests the term "Protection of the Environment" is a better term, since it is consistent with the current licensing requirement, and will avoid confusion with CEAA terminology.


OPG believes that Part A of this draft REGDOC should be removed and Part B re-issued as its own document, e.g. REGDOC-2.9.2. If Part A remains then it should be included with Part B and rewritten to provide a description of the environmental studies required as part of a licence application submission, and a description of how that information will be assessed by the CNSC and the public as part of the licensing process.

In order for OPG to prepare for submitting licence applications, the criteria that trigger the need to provide a new assessment of potential environmental effects compared to existing predictions of environmental effects also need to be defined. The criteria are required for Part A, and should tie to the environmental risk assessments and environmental monitoring programs under the CSA standards that the licensees are already performing for their facilities. Part A should also specify the content of the environmental studies which are to be required in licence application submissions that differentiates between an initial application, a renewal of an existing licence on the same licensing basis as was previously approved, and for the purpose of an amendment of that licensing basis due to either a change in the facility or a change in the CNSC requirements. OPG requests a CNSC Workshop be held to address stakeholder comments on draft REGDOC-2.9.1.

OPG's detailed comments on Draft REGDOC-2.9.1 are included in Attachment 1, providing more detail on the above points. This review of Draft REGDOC-2.9.1, and the resulting comments, was conducted in conjunction with Bruce Power, New Brunswick Power, and Atomic Energy of Canada Limited.

If you require further information or have any questions regarding this submission, please contact me at (905) 839-6747, extension 5264.

Sincerely,



Robin Manley
Director
Nuclear Regulatory Affairs

Attach.

cc: consultation@cnsccsn.gc.ca

Attached to OPG Letter, R. Manley to B. Torrie, "OPG Comments on Draft
REGDOC-2.9.1, Environmental Protection: Environmental Assessments,"
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ATTACHMENT 1

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

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

#	Document Section/ Excerpt of Section	Issue	Suggested Change (if applicable)	Critical or Major Comment/ Request for Clarification	Impact, if critical or major comment
1.	General	<p>The REGDOC -2.9.1 lacks clear guidance in a number of areas. The process appears as onerous as the pre-CEAA 2012 era. Essentially, the CNSC approach hasn't changed, but is following the same process as before. This goes against the intent of the changes that led to the CEAA 2012.</p> <p>Part A as written is a mini-CEAA exercise, or almost a screening decision under old CEAA: Project description, timelines, discussion of significance, potential intervener funding, etc.</p> <p>The intent of CEAA 2012 was to eliminate these types of exercises, as Parliament, through CEAA 2012, directed that efforts be focused on major projects. As written, Part A is effectively undoing the efforts of CEAA 2012 with no basis.</p>	<p>Remove Part A.</p> <p>Suggest CNSC convene a workshop with stakeholders to address stakeholder comments on REGDOC-2.9.1.</p>	Critical	Significant increased cost to Licensees and lack of clarity.

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2.	General	<p>OPG understands that the CNSC intends to combine this document with the current REGDOC-2.9.1. This new REGDOC is a separate issue/topic from the existing environmental programs REGDOC and should be a separate document.</p> <p>This is a significant policy change from other CNSC safety and control areas. The concern is with combining the EA process steps with the on-going requirements for environmental programs. The preference is to maintain the EA process separate from the on-going requirements.</p>	<p>Make this document REGDOC-2.9.2 – Environmental Protection: Environmental Assessments.</p>	Major	<p>For licensing purposes it will be confusing to have this document lumped into the same requirements document as environmental programs.</p>
3.	General	<p>There is no term "Environmental Assessment" defined in the NSCA. How can the CNSC develop a process that is not covered by the Act or Regulations?</p> <p>It appears that the CNSC is reinventing the screening and comprehensive level EAs under the NSCA. This seems to be contrary to the Red Tape Reduction directive and upcoming</p>	<p>Remove Part A. If Part A remains reformat or reword Part A to define how to meet the requirements for environmental protection that are already covered in the <i>General Nuclear Safety and Control Regulations, Class I Facility Regulations</i> and other associated NSCA regulations.</p> <p>If Part A remains, refer to protection of the environment, not</p>	Critical	<p>The use of environmental assessment, especially in Part A is misleading for both the public and the licensee.</p> <p>This has potential to greatly increase costs for licensees with no apparent benefit.</p>

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		<p>Act.</p> <p>Fundamentally, the terminology used in the REGDOC confuses two technically and legally separate processes.</p> <p>Environmental Assessments, per both CEAA and the history of environmental assessments, are supposed to be a planning tool, conducted prior to significant planning decisions. They are not supposed to be a licensing tool. The use of the term environmental assessment in this document is confusing and misleading.</p>	<p>environmental assessment.</p>		
4.	General	<p>In a number of public meetings, CNSC staff have stated that having an existing environmental program (e.g. ERA, monitoring etc. consistent with CSA standards), suffices to demonstrate protection of the environment (per NSCA). However, draft REGDOC-2.9.1 does not adequately reflect this. The existing licensing framework has proven adequate over many years to allow the Commission and staff to ensure the protection of the</p>	<p>Remove Part A. If Part A remains explicitly state that a valid ERA, and appropriate monitoring data is adequate to meet the licensing basis, and Part A does not apply.</p>	Major	Regulatory uncertainty, added costs and delays in the licensing process.

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5.	General	<p>environment (per NSCA mandate).</p> <p>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 trigger for an EA well beyond the original CEAA legislation.</p> <p>This seems to be contrary to the Red Tape Reduction directive. For example licence applications for administrative actions or activities such as transporting radioactive materials should not require a technical study for protecting the environment.</p> <p>For small projects, licensees expect no additional studies beyond those required by the licence to address protection of the environment.</p>	<p>Remove Part A. If Part A remains the trigger criteria need to be narrowed and properly defined.</p> <p>Define projects that would be captured under Part A as done under CEAA.</p>	Critical	This has potential to greatly increase costs for licensees with no apparent benefit.
6.	Pages 1 to 6, Part A	A separate process for an Environmental Assessment under the NSCA as described in Part A is not required. The EA should be	<p>Remove Part A.</p> <p>If Part A remains revise Part A to include aspects such as:</p>	Critical	As written this document will produce a redundant process for

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		<p>submitted, reviewed, and accepted without creating a unique EA process that is disconnected from the rest of the licence application. The stated purpose of improving the transparency of the CNSC's regulatory process could be better achieved by a document that outlines the environmental technical requirements to support the licence application so that the environmental studies can be submitted as part of the licence application process. This should also address how the environmental requirements are integrated with the timeline for other licence requirements. For example REGDOC 2.4.1 indicates that the safety analysis is performed to identify the effects on the environment and human health. The CNSC needs to assist licensees to understand how the various aspects of the application relate to each other.</p> <p>Using paragraph 3(1) (m) of the <i>General Nuclear Safety and Control Regulations</i> to add in studies on "factors as a</p>	<ul style="list-style-type: none"> the environmental content that is required to support a licence application; define the relationship of this document to other application requirements such as the safety analysis report which is required to evaluate potential effects on the environment per REGDOC-2.4.1; timing of environmental studies with respect to other application requirements; and requirements for consultation specific to environmental protection. 		<p>environmental submissions that is separate from the process for other licence application requirements. It also does not provide the clarity required to prepare the environmental content required for a licence application.</p> <p>There is no regulatory certainty without defined criteria. Licensees cannot properly plan for projects that do not trigger a CEAA 2012 EA. The uncertainty around the cost could result in the licensee not doing projects that could have benefit to safety or the environment.</p> <p>There is also the possibility of ineffective use of</p>

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		<p>consideration of cumulative effects or alternative means to carry out the project" is a misuse of this section of the regulations and provides no certainty to the process.</p>			<p>resources; unanticipated EA costs may make a project uneconomic.</p>
7.	<p>Section 3. Environmental Assessment Process</p>	<p>The way this process is set up it will add a significant amount of time to the licensing process (whether it be renewals or amendments), with little or no benefit.</p> <p>For example, Table 1 includes the key steps in the environmental assessment conducted by the CNSC with no reference to the timelines for these steps. Using the range of durations from Appendix D would result in significantly longer durations than current licensing timelines.</p>	<p>Remove Part A.</p> <p>If Part A remains revise the proposed process to clearly show the timelines.</p> <p>The process and timelines should reflect the risk or complexity of the project. The timelines in Part A should be shorter than those in Part B.</p>	<p>Critical</p>	<p>This has potential to greatly increase costs for licensees with no apparent benefit to nuclear safety and the environment.</p>
8.	<p>General</p>	<p>OPG's provided comments are focused on process issues. In reviewing the document OPG identified several technical clarifications in Part A, however these have not been provided here, as OPG disagrees with the</p>	<p>Remove Part A. Suggest CNSC convene a workshop with stakeholders to address stakeholder comments on REGDOC-2.9.1.</p>	<p>Clarification</p>	

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		inclusion of Part A.			
9.	Page 3, Table 1, Step 2	The submission of the licence application (Step 2) prior to providing EA guidance and requirements (Step 5) is not effective. A transparent process would involve documenting the environmental requirements in advance so that licence applicants can conduct any required environmental technical studies while preparing the other licence application requirements.	Remove Part A. If Part A remains the steps in Table 1 should be moved so that Step 5 (EA guidance and requirements provided to applicant) and Step 6 (Conduct EA technical studies) occur prior to Step 2 (Applicant submission of a licence application).	Major	Increases timelines, creates regulatory uncertainty and process inefficiencies.
10.	Section 3	Part A does not include an EA determination step to confirm that an EA under CEAA is not required.	Remove Part A. If Part A remains, add the following to step 1 for clarity: "If the applicability of CEAA is uncertain, the applicant may issue a letter of intent to the CNSC requesting a CEAA determination. The CNSC will respond to any such written request confirming their determination that CEAA does not apply or requesting a project	Clarification	

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11.	Part B	<p>The timelines in Part B should be aligned with those of CEAA 2012. CEAA 2012 is where CNSC gets its mandate, and CNSC should be aligned with the intent and basic objectives of CEAA – focus on major projects, with clear timelines and predictable process.</p> <p>Duration of CNSC led activities listed in Table 4 ranges from 272 to 730 days. Environmental Assessments led by the Agency must be completed within 365 days (Agency led activities).</p>	<p>description as described in Part B.”</p> <p>Align timelines with CEAA 2012.</p>	Major	<p>Longer period of regulatory uncertainty and cost. Inconsistent with CEAA.</p>
12.	Page 11, Section 6, Step 2, “Applicant submission of a licence application and project description”	<p>The conduct of the EA technical studies will provide information which will direct the project and thus contribute to the licence application.</p> <p>The licence application should occur after EA studies are complete</p>	<p>Rename Step 2 to “Applicant submission of a written notification and project description”.</p> <p>After Step 10 add “Applicant submission of licence application”</p>	Major	<p>Increases timelines, creates regulatory uncertainty and process inefficiencies.</p>
13.	Section 6, Steps 10 to 12.2	<p>There is a lot of duplication in these steps: the proponent writes a study, CNSC paraphrases it in their EA report and summarizes</p>	<p>Streamlining is required. (Streamlining may also help reduce the overall timelines.)</p>	Major	<p>Additional cost and increased timelines.</p>

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		<p>the whole thing in a CMD. This also introduces delays caused by the external review of the technical study and of the EA report.</p>			
14.	Section 6, Table 2	Columns should be added for the "actionee" and "timelines" which are consistent with CEAA to improve clarity.	Change as suggested.	Clarification	
15.	Page 19 & 28, Appendix A Figure 1 and Appendix C Figure 2	The steps in the figures do not align with the steps outlined in sections 3 and 6.	<p>Remove Part A or redraw figure 1 to align with steps in section 3. Redraw Figure 2 to align with steps in section 6.</p>	Clarification	
16.	App B, Table 6, 7 and following	<p>Appendix B (EA Determination form, Table 6, 7 and following) is an attempt to put some structure in place, but it is subjective and open to challenge For example, there are assessment factors but there is no scaling or examples for what constitutes "Very Low", "Low", "Moderate" and "High".</p>	<p>Incorporate specific details: e.g. reference "Existing Environmental Assessment Approval", Compliant with CSA 288 requirements, etc. Include a rating system for the "Public and Aboriginal Interest Criteria" and "Environmental Characterization and Impact Criteria" and include examples of very low, low, moderate and high.</p>	Major	Lack of clarity leads to uncertainty, and demands for additional studies every time licence renewal is required.

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			A table similar to Table 3 on page 13 which provides examples should be developed for criteria for rating Public and Aboriginal Interest Criteria. This would ensure greater consistency.		

