

Theresa McClenaghan

From: <shawn.patrick.stensil@yto.greenpeace.org>
To: "Theresa McClenaghan" <mcclenaghan@execulink.com>
Sent: Friday, March 11, 2005 3:06 PM
Attach: CMDCEAA.pdf
Subject: Re: Bruce Hearings

Hi Theresa,

I just got the the revised recommendations on CEAA sent to me. They basically wrote off most of our comments. See attached.

SP

On 11 Mar 2005 at 14:28, Theresa McClenaghan wrote:

Send reply to: "Theresa McClenaghan" <mcclenaghan@execulink.com>
From: "Theresa McClenaghan" <mcclenaghan@execulink.com>
To: <shawn.patrick.stensil@mail.yto.ca.gl3>
Subject: Re: Bruce Hearings
Date sent: Fri, 11 Mar 2005 14:28:47 -0500
Organization: Canadian Environmental Law Association

Great, Shawn Patrick. I still have to schedule the next meeting; plus we have to update Dave re the discussion and I have to do the meeting notes; I was totally side tracked this week and will work on it late next week. also to talk about info below. I'm away Mon to Wed with kids for our march break and then on road a bit but this email and cell number below best to reach me over next week. Take care. Theresa

----- Original Message -----

From: shawn.patrick.stensil@yto.greenpeace.org
To: mcclenaghan@execulink.com
Sent: Friday, March 11, 2005 1:18 PM
Subject: Bruce Hearings

Hi Theresa, just a note to say that I've landed in Toronto. Could you please put this email - shawn.patrick.stensil@yto.greenpeace.org - on the Energy Vision email list.

In other news, you will find below the announcement for the hearings on the draft EA guidelines at Bruce. We should discuss further the idea of filing a complaint with the Parliamentary Commissioner the day of the hearings.

My new number is 416-597-8408 ex 3013

Cheers

Shawn-Patrick Stensil

February 22, 2005 Ref. 2005-H-5

The Canadian Nuclear Safety Commission (CNSC) will hold a one-day public hearing on the Environmental Assessment Guidelines (EA Guidelines) for the proposed restart of reactor Units 1 and 2 at the Bruce A Nuclear Generating Station (NGS) and extension of their projected operating life until 2043. The proposal also includes the potential extension of the projected operating life of reactor Units 3 and 4 until 2043 and the potential use of Low Void Reactivity Fuel in all four units at Bruce A NGS.

One-Day Hearing: May 19, 2005

Place: CNSC Public Hearing Room, 14th Floor, 280 Slater Street, Ottawa, Ontario
Public hearings begin at 8:30 AM and follow the agenda published prior to the hearing date.

Bruce Power Inc. (Bruce Power) has notified the CNSC of its intent to apply for authorization to complete the repairs and modifications necessary to restart Bruce A NGS Units 1 and 2 and extend their projected operating life to 2043. Units 1 and 2 are currently in a secure shutdown state. Bruce Power is also seeking permission for the possible extension of the projected operating life of reactor Units 3 and 4 which were returned to service in 2003, and for the possible use of low-reactivity fuel in all four units at the Bruce A NGS. Under the Canadian Environmental Assessment Act, the CNSC must complete an environmental assessment of the project before deciding whether to proceed with a licensing decision on Bruce Power's application. Based on the results of the environmental assessment, the CNSC must determine if the project is likely to cause significant adverse environmental effects, taking into account the application of appropriate mitigation measures.

If the EA Guidelines are approved, the Commission will later hold a public hearing on the results of the environmental assessment prepared in accordance with the approved EA Guidelines and, at a further date, a public hearing on the licence application.

The public is invited to comment on the EA Guidelines either by oral presentation or written submission, or can simply observe the public hearings. The draft EA Guidelines (scoping document) will be made available to the public on March 18, 2005. Requests to participate (interventions) and text of oral presentations or written submissions must be filed with the Secretary of the Commission by April 19, 2005 at the address below.

Agendas and information on the hearing process are available at the CNSC Web site: www.nuclearsafety.gc.ca. Hearing documents (submissions) are not available on-line and must be requested through the Secretariat at the address below:
c/o Louise Levert

Secretariat

Canadian Nuclear Safety Commission Tel.: (613) 996-9063 or 1-800-668-5284
280 Slater St., P.O. Box 1046 Fax: (613) 995-5086
Ottawa, Ontario K1P 5S9 E-mail: interventions@cnsccsn.gc.ca

Shawn-Patrick Stensil
Energy and Climate Champaigner
Greenpeace Canada

The following section of this message contains a file attachment prepared for transmission using the Internet MIME message format. If you are using Pegasus Mail, or any other MIME-compliant system, you should be able to save it or view it from within your mailer. If you cannot, please ask your system administrator for assistance.

---- File information -----

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File / dossier : 10-83-6

**Information and Recommendation
from Canadian Nuclear Safety
Commission Staff**

**Renseignements et recommandations
du personnel de la Commission
canadienne de sûreté nucléaire**

In the matter of

À l'égard des

Recommendations for Improvements to the
Program

Recommandations d'améliorations au
Programme

**The CNSC Program to Fulfill
Responsibilities under the *Canadian
Environmental Assessment Act***

**Le Programme de la CCSN afin qu'elle
s'acquitte de ses responsabilités aux termes
de la *Loi canadienne sur l'évaluation
environnementale***

Commission Meeting

Réunion de la Commission

March 23, 2005

Le 23 mars 2005

Summary

The *Canadian Environmental Assessment Act* (CEAA) requires all federal departments and agencies to ensure that an environmental assessment (EA) is conducted for projects for which they have a specified decision-making authority. In the Canadian Nuclear Safety Commission (CNSC) context, EAs are required when the CNSC, pursuant to subsections 24(2) or 37(2) of the *Nuclear Safety and Control Act* (NSCA), issues or amends a licence or grants an approval under a licence for the purpose of enabling a project to proceed. There are four types of EAs defined under the CEAA: screening; comprehensive study; review panel; and mediation.

In 2004, the CNSC initiated ten screening EAs under the CEAA. Four screenings and one comprehensive study were also completed in 2004. Two of those screenings were accepted and approved by Designated Officers (D.O.s), and two came before the Commission tribunal for approval at public hearings.

During 2004, CNSC staff also reviewed the effectiveness and efficiency of its CEAA processes through several activities, one of which included the hiring of an independent consultant to evaluate the CNSC CEAA process and to consult with a number of stakeholders.

Résumé

La *Loi Canadienne sur l'évaluation environnementale* (LCEE) oblige tous les ministères et organismes fédéraux à s'assurer qu'ils réalisent une évaluation environnementale (EE) à l'égard des projets pour lesquels ils ont un pouvoir décisionnel spécifique. Dans le contexte de la Commission canadienne de sûreté nucléaire (CCSN), des EE sont nécessaires lorsque la CCSN, conformément aux paragraphes 24(2) ou 37(2) de la *Loi sur la sûreté et la réglementation nucléaires* (LSRN), délivre ou modifie un permis, ou encore accorde une approbation aux termes d'un permis afin de permettre à un projet d'aller de l'avant. La LCEE définit quatre types d'EE : examen préalable, étude approfondie, commission et médiation.

En 2004, la CCSN a entamé dix examens préalables aux termes de la LCEE. De plus, quatre examens préalables et une étude approfondie ont été terminés en 2004. Deux de ces examens préalables ont été acceptés et approuvés par des fonctionnaires désignés, et les deux autres ont été présentés au tribunal de la Commission aux fins d'approbation lors des audiences publiques.

En 2004, le personnel de la CCSN a examiné l'efficacité et l'efficience de ses processus relatifs à la LCEE au moyen de plusieurs activités, dont une qui consistait à embaucher un consultant indépendant pour évaluer le processus de la CCSN relatif à la LCEE et consulter un certain nombre de parties intéressées.

Summary (Cont'd)

Based on the results of these reviews, CNSC staff is seeking Commission approval for changes to improve the CNSC's CEAA program. These changes focus on the screening level of assessment and are further to those approved by the Commission in June 2003 and documented in the February 2004 *Canadian Nuclear Safety Commission – Guidelines for Environmental Assessments Pursuant to the Requirements of the Canadian Environmental Assessment Act* (CNSC Guidelines for CEAA).

The recommendations proposed by CNSC staff in this CMD include:

- the delegation by the Commission of all decision-making authority on screening-level assessments to D.O.s with provision for D.O.s, in exceptional, defined circumstances, to not exercise their authority and elevate a decision to the Commission;
- the preparation of clearer instructions to proponents or other parties to whom the CNSC delegated the preparation of assessment studies pursuant to section 17 of the CEAA. Those instructions will ensure that the information gathered is relevant and commensurate with the level of risk and complexity of the project being assessed;
- the implementation of more focused public consultation opportunities during the conduct of EAs; and

Résumé (suite)

Compte tenu des résultats de ces examens, le personnel de la CCSN demande l'approbation de la Commission pour apporter des changements au programme relatif à la LCEE, changements qui, à son avis, amélioreront le programme. Ces changements portent sur l'examen préalable et font suite à ceux approuvés par la Commission en juin 2003 et publiées en février 2004 dans le document intitulé *Commission canadienne de sûreté nucléaire – Lignes directrices sur l'évaluation environnementale, conformément aux exigences de la Loi canadienne sur l'évaluation environnementale* (Lignes directrices de la CCSN sur la LCEE).

Les recommandations proposées par le personnel de la CCSN dans le présent CMD comprennent ce qui suit :

- la délégation, par la Commission, de tout pouvoir décisionnel concernant les examens préalables au personnel de la CCSN, avec une disposition prévoyant que le personnel, dans des cas exceptionnels et définis, n'exerce pas son autorité et soumette le tout à une décision de la Commission;
- la préparation d'instructions plus claires pour les promoteurs et autres parties dont l'exécution d'une étude approfondie leur est déléguée par la CCSN, conformément à l'article 17 de la LCEE. Ces instructions viseront à s'assurer que l'information recueillie est appropriée au niveau de risque et à la complexité du projet évalué et qu'elle en tient compte;
- la mise en place de possibilités de consultation publique plus ciblées pendant la réalisation d'une EE; et

Summary (Cont'd)

- a modified guide for the conduct of screening environmental assessments by the CNSC. The guide will consolidate all relevant criteria, templates and process requirements.

Résumé (suite)

- la préparation d'un guide concernant l'exécution des examens préalables par la CCSN. Le guide rassemblera tous les critères pertinents, les modèles et les exigences relatives au processus.

Signed / signé le
2005-03-04

James Y. Clarke

Executive Director, Office of Regulatory Affairs
Directeur exécutif, Bureau des affaires réglementaires

Barclay D. Howden

Director General, Directorate of Nuclear Cycle and Facilities Regulation
Directeur général, Direction de la réglementation du cycle et des installations nucléaires

1. PURPOSE

With the Commission's acceptance of the CNSC staff's recommendations proposed in June 2003 for improving the CNSC's CEAA program¹, CNSC staff committed to report annually to the Commission on the implementation of the revised CEAA program. The annual reports were to include a review of the EAs that had been carried out during the previous year, and any policy or process issues that had arisen during that time.

The purpose of this Commission Member Document (CMD) is therefore to

- provide the Commission with the annual report on the implementation of the CNSC's CEAA Program for the year 2004;
- inform the Commission of activities carried out in 2004 to review the CNSC's CEAA Program, including an independent consultant review; and
- seek Commission approval of recommendations by CNSC staff for further improvement to the CNSC's CEAA Program, focusing on the screening level of assessment.

Definitions

- "CNSC Guidelines on CEAA" refers to the *Canadian Nuclear Safety Commission – Guidelines for Environmental Assessments Pursuant to the Requirements of the Canadian Environmental Assessment Act* that were issued by the CNSC in February 2004 and revised in December 2004.
- "CEAA" refers to the *Canadian Environmental Assessment Act*.
- "CEAA Program" is the set of policies, procedures and guidelines that describe how the CNSC fulfills its CEAA responsibilities.
- "Commission" refers to the tribunal component of the Canadian Nuclear Safety Commission (up to seven Governor-in-Council appointees).
- "CNSC" refers to the Commission and the Commission staff collectively.
- "Environmental Assessment" or "EA" is defined as the specific process under the CEAA.
- "EA Guidelines template" refers to Appendix B of the *CNSC Guidelines on CEAA*.

¹ Staff recommendations presented at the Public Meeting of the Commission on June 25 2003 - CMD 03-M43. The improvements were accepted by the Commission and subsequently published in "*Canadian Nuclear Safety Commission, Guidelines for Environmental Assessment Pursuant to the Requirements of the Canadian Environmental Assessment Act*" (February 2004 – revised December 2004).

2. BACKGROUND

2.1 CNSC Systems Approach to Environmental Management

One of the principle objects of the *Nuclear Safety and Control Act* (NSCA) is to “prevent unreasonable risk to the environment...” [NSCA 9(a)(i)]. The NSCA and its associated regulations place obligations for protection of the environment on proponents and operators of nuclear facilities and activities. They also provide the CNSC with broad regulatory powers related to environmental protection.

The CNSC fulfils its responsibilities for environmental protection, in part, through the application of environmental protection policies, programs and procedures and by requiring licensees to implement human health and environmental risk assessment tools, and by requiring related monitoring programs.

A complementary element of the CNSC’s environmental protection requirements and activities is environmental assessment under the CEAA. The CEAA requires all federal departments and agencies to conduct an EA for certain projects for which they have a specified decision-making authority. It is a planning tool that is to be completed before irrevocable decisions on a project are taken. In the CNSC context, EAs are required when the CNSC, pursuant to subsections 24(2) or 37(2) of the NSCA, issues or amends a license or grants an approval under a license for the purpose of enabling a project to be carried out. The assessments of human health and environmental risks required under the NSCA and related regulations are often done initially during EAs conducted to meet the provisions of the CEAA and then revised as appropriate during the term of the license.

There are four types of EAs defined under the CEAA: screening; comprehensive study; review panel and mediation. The vast majority of assessments conducted by responsible authorities (RAs), including the CNSC, are done at the screening level. A description of each of the four levels of assessment is attached in Appendix A. The CNSC has been an RA since 1995 when the CEAA came into force. Since 1995, the CNSC has conducted 100 EAs, 21 of which are still ongoing. Of these 100 assessments, 30 were completed since the coming into force of the NSCA in 2000.

CNSC staff has adopted a systems approach to environmental management which effectively integrates the provisions of the CEAA into licensing under the NSCA where applicable. The approach helps to ensure that potential impacts of projects identified through EAs early in the planning stages of projects are monitored and managed throughout the balance of the licensing review stages and the project lifecycle. By integrating the follow-up provisions of the CEAA, the CNSC’s regulatory environmental management system allows for a risk informed evaluation of the appropriateness and effectiveness of mitigation measures that were identified in an EA and subsequently implemented under the authority of a CNSC license, and for requiring additional mitigation measures should they become necessary. This integration of the requirements under the NSCA and the CEAA allows for the continuous evaluation of new developments in environmental science and technology by CNSC staff and will continue to contribute to greater environmental protection.

2.2 The CNSC's Current CEAA Program

The following is a brief summary of the CNSC current CEAA program. Section 5 below provides CNSC staff recommendations on potential improvements to how the CNSC conducts the screening level of assessment.

The current CEAA program at the CNSC involves the following primary management functions:

- coordination of the CNSC's process for conducting environmental assessments of projects;
- consultation with stakeholders on CEAA program issues;
- development and maintenance of program policies, processes and procedures to ensure compliance with the requirements of the CEAA; and
- communication with the Canadian Environmental Assessment Agency on federal EA policy, legislative and operational matters.

As described in the CNSC Guidelines on CEAA there are two possible processes for screenings and comprehensive studies – a designated officer (D.O.) process and a Commission process. It was decided that a D.O. EA process would be followed for projects for which the ultimate licensing authority for the particular project type has been delegated to a D.O. pursuant to section 37 of the NSCA. The Commission EA process would be followed for all other projects where, if the application proceeds beyond the EA stage, the Commission has not delegated the subsequent licensing decision. A D.O. could “bump up” the decision on EA guidelines to the Commission in circumstances where criteria in Appendix A to the CNSC Guidelines on CEAA applied.

The key elements of the two current CNSC EA processes for screenings are summarized in Table 1.

Table 1 Current CNSC EA Processes for Screenings

	DESIGNATED OFFICER PROCESS	COMMISSION PROCESS
Coordination of Federal Authorities	Pursuant to CEAA Federal Coordination Regulations	Pursuant to CEAA Federal Coordination Regulations
Preparation of Project-Specific EA Guidelines	CNSC Staff, using EA Guidelines template issued as Appendix B to the CNSC Guidelines on CEAA	CNSC Staff, using EA Guidelines template issued as Appendix B to the CNSC Guidelines on CEAA
Decision on EA Guidelines	D.O.	D.O.(unless bumped up to the Commission as per criteria in Appendix A of the CNSC Guidelines on CEAA)
Public Participation led by the CNSC	CNSC staff have the option to consult on draft EA guidelines (5 of 9 EAs in 2004 were subject to limited public consultation). Public consultation generally occurs on draft screening report.	Up to four opportunities for public participation 1. Draft EA Guidelines (led by staff) 2. Final EA Guidelines (at public hearing if bump-up criteria apply) 3. EA Screening Report (led by staff) 4. Public Hearing on Final EA Screening Report
Public Participation delegated to Proponent	CNSC directs project proponent to implement appropriate public consultation activities during conduct of the supporting delegated assessment activities and studies.	CNSC directs project proponent to implement appropriate public consultation activities during conduct of the supporting delegated assessment activities and studies.
EA Screening Decision	D.O.	Commission

3. INFORMATION REVIEWED FOR THIS CMD

3.1 Annual Report on the Implementation of the CNSC CEAA Program

Over the past twelve months CNSC staff has implemented the 2004 CNSC Guidelines for CEAA. During that timeframe, CNSC staff has reviewed approximately 60 project proposals and determined that ten EAs were required to be performed. Five EAs that were initiated prior to January 1, 2004 were completed in 2004. Twenty one EAs remain in progress at the time of the submission of this report. An overview of projects involving the CNSC last year is attached as Appendix D.

Some important initiatives for improving the efficiency and effectiveness of the process were also started in 2004. For example, in the past year, CNSC staff encouraged Atomic Energy of Canada (AECL) at its Chalk River Laboratories (CRL) to coordinate their applications to the CNSC by combining, when possible, several proposals into one letter of intent. Federal EAs, including CNSC EAs, are typically conducted on a project-by-project basis. By grouping a number of projects affecting the site in this way, CNSC staff is provided with an opportunity to consider the feasibility of completing environmental assessments of several projects concurrently under one parallel EA process. This approach has been implemented as a pilot project at CRL. As a result, three distinct projects at CRL are currently being assessed under a concurrent and parallel EA process.

The approach is expected to result in improvements to effectiveness by ensuring a more systematic and holistic evaluation of the overall potential environmental effects. It will also facilitate more effective stakeholder involvement by reducing duplication of interventions. Efficiency gains are expected through reductions in cost and time for both stakeholders and the CNSC, without affecting the effectiveness of the process.

Turning to another initiative, CNSC staff assisted Indian and Northern Affairs Canada in drafting regulations that are being developed pursuant to the *Yukon Environmental and Socioeconomic Assessment Act (YESAA)*. Although the CNSC does not currently have EA activities in the Yukon, it was invited to participate in the development of YESAA regulations in order to ensure that any potential CNSC EAs conducted there would have regulations that satisfy the CNSC requirements. This EA regime for the Territory received Parliamentary Royal Assent in May 2003. The YESAA replaces the CEAA in the Yukon, except under certain limited situations where the CEAA will continue to apply. Eventually the YESAA will replace the Yukon Territory's Environmental Assessment Act and First Nations EA processes. Hence, only one EA process will apply in the Yukon. YESAA Regulations are expected to come into force in April 2005.

CNSC staff regularly attends Canadian Environmental Assessment Agency (CEA Agency) Senior Management Committee on Environmental Assessment (SMCEA) held in the National Capital Region. CNSC staff has also increased its effort to participate in Regional Environmental Assessment Committee (REAC) meetings in applicable provinces. The meetings are chaired by the Regional Director of each of the six CEA Agency regional offices. REAC meetings provide a venue for discussing matters of general interest to federal EA practitioners from other departments and agencies to ensure an efficient and timely environmental assessment process.

CNSC staff has developed an 'EA Determination Request Form' to be used by project officers on the receipt of an application or letter of intent from a licensee or potential licensee. The purpose of the form is to facilitate the exchange of information between EA staff and licensing staff, to allow for a more efficient technical assessment of the project by EA staff. The form is available on BORIS. It has been used in 43 determinations to date.

CNSC staff has initiated an internal CEAA training program designed to familiarize staff with the requirements of the CEAA, changes to the CEAA that directly affect CNSC staff, and the process by which CNSC staff conduct EA determinations. The objective of this program is to reduce delays on the initiation of an EA by communicating to project officers the process that the CNSC follows and the obligations that the CNSC has under the CEAA. It is anticipated that this program will reduce the potential for delaying the initiation of an EA, and provide single point of contact with relevant information to communicate to licensees.

CNSC staff is working with the CEA Agency to reduce duplication between the environmental protection regulatory obligations under the NSCA and the environmental assessment obligations under the CEAA. Proposed amendments to the *Exclusion List Regulations* of the CEAA resulted from this consultation.

Some projects subject to EA by the CNSC pose a lower risk to the environment than others and do not generate a great deal of public interest. For two low risk projects, CNSC staff have implemented a 'template EA' on a test basis. The intention is to provide for less onerous requirements on both regulators and licensees without compromising the CNSC's fulfillment of its obligations under the CEAA nor the effectiveness of its oversight.

CNSC staff has also initiated a gap analysis to identify weakness in the CNSC's CEAA program in support of continuous improvement. This information will be used as the basis for developing a plan intended to ensure that the CNSC administers its CEAA program in an effective and consistent manner and that the CNSC's CEAA corporate memory is documented, maintained and made available to others within the CNSC.

CNSC staff regularly delegate public consultation activities to the proponent of a project as permitted under s. 17 of the CEAA. CNSC staff has attended some of these activities as an observer to answer any questions that the public may have. Attendance at these activities is meant to raise the visibility of the CNSC and to ensure that the proponent is adequately consulting with the public.

CNSC staff has also led outreach programs designed to provide license applicants with general information for the conduct of an EA. For example, some licensees were provided with the requirements for project submissions, and with expected schedules for the assessment. Technical workshops were also held with license applicants to provide them with CNSC expectations for the use of specific scientific information, to provide comments on technical documents and to provide feedback on draft reports provided by the applicant. Workshops were also held with licensees and other federal authorities to resolve outstanding EA-related technical issues.

CNSC staff has attended meetings and participated in hearings in Quebec held under the process of the Bureau d'audiences publiques sur l'environnement (BAPE) for the assessment of nuclear projects. CNSC staff provided the BAPE with advice on the federal EA process as well as expert advice on radiation protection, environmental assessment, and environmental, nuclear safety, CNSC licensing and compliance requirements of proposals.

3.2 Independent Consultant Review of CNSC Application of CEAA

In the spring of 2004, CNSC staff commissioned Sussex Circle Inc, a private consulting firm, to conduct a review of the CNSC's application of the CEAA. This review was initiated as a result of the CNSC's commitment to continuous improvement and good governance, and also in support of the commitment to regularly review how the CNSC applies the CEAA.

Through a series of interviews with selected government, industry and non-government organization officials and the examination of relevant organizational, policy and process-related documentation, Sussex Circle was asked to identify where and how CNSC could improve its effectiveness and efficiency in applying the CEAA requirements. The review was to take into full account the current CNSC Guidelines on CEAA.

Sussex Circle submitted its final report to the CNSC in October 2004 (see Appendix E). The report contains conclusions and recommendations grouped in five areas:

- Licensing and EA process integration
- Risk Management
- Stakeholder Consultation and Relations
- Roles and Responsibilities
- Use of Commission Public Hearings

Following its initial review of the report, CNSC staff sent the report for comments to all of the groups and organizations that had been approached for interviews by Sussex Circle. CNSC staff reviewed all the information including the comments received and determined which issues warranted action (section 4) and have developed recommendations for the Commission's consideration (section 5).

3.3 Review of Select Projects Against the CNSC Guidelines on CEAA

In a separate but parallel initiative to the Sussex Circle review, the Regulatory Affairs Committee of the Canadian Nuclear Association (CNA) and the CNSC agreed in December 2003 to review a select number of EAs completed or underway for the purposes of identifying improvements to the way EAs are conducted.

The three projects selected were:

- the proposed Nordion Waste Diversion Project

- the proposed use of slightly enriched uranium fuel at Bruce Nuclear Generating Station
- the McClean Lake Sue E Project

In the review, licensee staff and CNSC staff developed conclusions independently then compared findings and outlined common issues. These issues are described in section 4.

3.4 Review of CNSC and NEB EA Screening Processes

Among federal departments and agencies, the National Energy Board (NEB) has many similarities to the CNSC in terms of structure and decision making. For example, its licensing decisions are made by a Board, and are preceded by Board decisions on EA screenings or comprehensive studies.

The NEB process was analyzed and compared against the current CNSC processes in support of the recommendations proposed in this CMD. The results of this analysis are summarized in Appendix B.

Based on comments received over the past year, CNSC staff also did a comparison of CNSC CEAA program requirements against the actual requirements of CEAA, and verified the results with CEA Agency officials. The results of this review are also included in Appendix B.

3.5 Consultation on Draft CMD

In consideration of all information referred to in the above sections, a draft CMD was developed by CNSC staff. It was sent for comment in January 2005 to all of the groups and organizations that had been approached for interviews by Sussex Circle. At the end of the 30 day comment period, twelve sets of comments were received and dispositioned. An overview of the comments received and how they were dispositioned is attached as Appendix F.

4. AREAS IDENTIFIED FOR IMPROVEMENT

Issues Identified as a Result of the Sussex Circle Report (further to s. 3.2)

After reviewing and consulting with stakeholders on the contents of the Sussex Circle report, CNSC staff has identified several important aspects of the CNSC CEAA program for possible improvements.

Issue 1 – There is a perception that the CNSC is not consistently taking a risk-informed approach to screening-level EAs. It is felt that screenings conducted by the CNSC are equivalent in nature to comprehensive studies conducted by other agencies and departments, in terms of information requirements and public consultation. It is recommended that further improvements can be made that would result in a more risk-

informed approach to screenings while not compromising the CNSC's fulfillment of its CEAA obligations nor its effectiveness in ensuring protection of the environment requirements pursuant to the NSCA.

Issue 2 - There appears to be duplication in public consultation during screening-level EAs in the current CNSC CEAA program and this is resulting in some stakeholders reporting consultation fatigue and confusion surrounding the respective roles of EAs and licensing, and the purpose of consultation in relation to each process. Several stakeholders commented that neither the EA process nor the licensing process is receiving as much input from the public, affected communities or non-government organizations because of multiple processes and consultation fatigue.

Issue 3 - The current format for many of the existing public consultations appears to be limiting the effectiveness of the public consultation. Stakeholders indicated that they value the ability to express their views directly to decision-makers and pointed out that consultations are best held in the communities where sensitive projects are to be implemented. In this context, EAs that involve only Ottawa-based consultations may not be conducive to broad and varied participation.

Issue 4 - Comments have been made to the effect that the current EA Guidelines template, used in both the current D.O. and Commission EA processes, does not adequately accommodate projects with both a low or high potential for environmental effects. This can result in information requirements not being commensurate with the size and complexity of the project being assessed.

Issues Identified by the EA Project Tracking Exercise (further to s. 3.3)

From its review of application of the CNSC Guidelines on CEAA to three actual EA projects, CNSC staff identified the following additional issues for which it recommends improvements be made.

Issue 5 - There have been delays in determining whether EAs are required and therefore in initiating the EA process in some cases. The process for deciding whether an EA is required for a project, and, if so, the type of EA required, has sometimes been problematic in practice. The project descriptions on which these decisions are made have often not contained sufficient information to enable the environmental assessment specialist to make a determination in a timely fashion.

Issue 6 - There have been delays in receiving comments from other government departments on the scope of project/assessment, the technical documents provided by the proponent, and the draft EA screening report. The work conducted in an environmental assessment in almost all cases requires input and subsequent assessment from federal authorities that have been identified under the *CEAA Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements (Federal Coordination Regulations)*.

5. RECOMMENDATIONS

In consideration of the information gathered over the past year and the above issues, CNSC staff recommends that the Commission approve the following modifications to the CNSC CEAA process for screening-level environmental assessments:

Recommendation 1

To lessen consultation fatigue and increase process efficiency without jeopardizing effectiveness of the CNSC CEAA process or requirements for protection of the environment pursuant to the NSCA, it is recommended that the CNSC EA process be administered by CNSC staff with scoping and screening decisions made by the applicable licensing D.O. Where licensing authority has not been delegated to a D.O., the Commission would be informed of the D.O.'s EA guidelines and screening decisions at the time the initial staff CMD is filed for the licensing hearing. In addition, the Commission would receive a comprehensive briefing on the results of the EA at the first day of the licensing hearing.

CNSC staff is of the view that it has gained substantial experience through the Commission's involvement in the EA process over the past several years to the point where it considers it timely to transition to a staff-managed EA process conducted as an integral element of a systems approach to environmental management.

Only where the D.O. determines that it is in the public interest for the EA matter to be approved at the Commission level, would screening EA matters come before the Commission for decision. This determination would take into account pre-set criteria that would be published in the revised CNSC Guidelines on CEAA Screenings (referred to in recommendation 3). These criteria would include circumstances where

- the D.O. determines that a decision to refer the project for panel review may be warranted, or
- the D.O. believes that there is a high likelihood of significant adverse environmental effects that cannot be mitigated

This new approach would include a process that would allow stakeholders in any given proceeding to apply to the Commission, asking that the D.O.'s decision(s) be referred to the Commission for final decision(s).

After one year of experience with the revised process, CNSC staff would prepare a report on the application of the process for review by the Commission at a public meeting.

Benefits

- a) There would be shorter process time for screenings except for extraordinary circumstances where CNSC staff chose not to exercise their authority and elevate an EA decision to the Commission.

- b) Stakeholder participation would be more effective in both the EA and licensing processes. There would be less potential for confusion between EA and licensing processes and there would be an added effect of reducing overall stakeholder fatigue as a result of recommendation 3 below.
- c) EA would be used more as a planning tool earlier in the project's conceptual environmental design stages, which is in support of the main objective of EA.

Disbenefits/Risks Requiring Mitigation

- a) Stakeholders may view the lack of Commission involvement as a signal that CNSC is less committed to environmental assessment. CNSC staff would need to ensure and to demonstrate that experience gained through the Commission EA process would be applied to the new process and that quality of assessments and process would remain high.
- b) Stakeholders may take issue with a D.O. led EA process. The process allowing a stakeholder to apply to the Commission asking that the D.O.'s decision(s) be referred to the Commission for final decision(s), might help to address this issue. As this process could result in substantive delays, it would be important to put in clear timelines and milestones for stakeholders with respect to when an application could be submitted, and on what grounds they could be submitted.

Recommendation 2

It is recommended that a D.O. charged with the responsibilities outlined in recommendation 1 be identified at the level of Director General (D.G.) in the CNSC and that the D.G.s with this responsibility receive substantive training on the CNSC's CEAA program, the role and responsibility of D.O.s, and the role of responsible authorities under the CEAA.

Benefits

- a) Important EA decisions would be consistently made at a senior level within CNSC staff. Currently, a D.O. could be a CNSC staff person below the level of D.G.
- b) Further training of D.O.s would ensure consistency, efficiency and effectiveness in process application.

Recommendation 3

It is recommended that as part of a new systems approach and framework, CNSC staff revise the CNSC Guidelines on CEAA to include the process to be administered by CNSC staff. The Guidelines would include:

- a) more specific guidance with respect to what the CNSC expects from proponents for screenings. This guidance would assist proponents in ensuring that the level of information they produce, and the degree of public consultations they carry out, is commensurate with the level of risk and complexity of the project they are putting forward, as well as assisting proponents in meeting licensing requirements should the proposed project proceed;

- b) a revised EA Guidelines template (or templates) that would accommodate projects with both a low or high potential for environmental effects to ensure that potential project/environment interactions dictate the content of the EA. Consideration should be given to tabular screening reports for low risk projects;
- c) information with respect to how CNSC staff will fulfill its role when it is the federal EA coordinator; and
- d) all criteria and process requirements relevant to the CNSC CEAA screening process.

Benefits

- a) There would be a more comprehensive and clear documentation of the CNSC CEAA program for screenings which would result in increased certainty and clarity of process.
- b) Information requirements would be more commensurate with the size and complexity of the project being assessed and be better aligned with CNSC regulatory requirements.
- c) CNSC staff, stakeholders, and the Commission (when a screening has been bumped up to the Commission) would be able to spend more time reviewing information that is of most relevance to the project under review, which should result in a higher quality process overall.

Disbenefits/Risks Requiring Mitigation

- a) If guidance is too prescriptive, it may not result in a risk-informed approach. Caution would have to be taken in the development of the guidance material to ensure an appropriate balance is achieved.

Recommendation 4

It is recommended that the CNSC staff screening process in the guidelines include:

- a) a requirement for the public to be given an opportunity to comment on draft project-specific EA guidelines documents; and
- b) mandatory public consultation/outreach by CNSC staff on the screening report, to be conducted by CNSC staff in the project area where the CNSC has determined that public interest would warrant an interactive consultative process.

Benefits

- a) There would be more clearly defined public participation opportunities.
- b) There would be more direct public participation opportunities, where appropriate, with the opportunity for stakeholders to interact with EA decision-makers in their own community.
- c) There would be less risk of consultation fatigue for stakeholders.

- d) The consultation would happen at an earlier time and include discussion on matters such that it could have the most positive effect on the environmental design of the project.
- e) The screening process would be more consistent with that practiced across the federal government. Currently, the use of the Commission public hearing process is more comparable to a Review Panel than a screening process.

Disbenefits

- a) There would not be an opportunity for the public to appear before the Commission for the vast majority of screenings. For projects for which licensing authority has not been delegated to a D.O., the public would have the opportunity to address the Commission on environmental protection matters during the licensing process.

Recommendation 5

It is recommended that CNSC staff continues to attend major public consultations held by proponents relating to the environmental assessment of a project. CNSC staff feels that participation is important from both a CNSC profile and public confidence perspective.

Benefits

- a) Stakeholders would continue to benefit from the expertise of CNSC staff during consultations.
- b) Participation would support overall CNSC objectives for increasing public awareness and confidence in the CNSC.

Disbenefits/Risks Requiring Mitigation

- a) There is a significant cost associated with CNSC staff participation in proponent-led consultations. However, this would be mitigated through CNSC staff participation in the more significant and sensitive proponent-led consultations.
- b) The appearance of CNSC staff at proponent-led consultation events could create a perception that the CNSC staff is working with the proponent in promoting the project. Care would be taken to ensure some physical separation and clear messaging related to the objectivity, neutrality, mandate and decision-making process under the NSCA.

Recommendation 6

It is recommended that:

- a) CNSC staff conducts specific internal briefing/training for project officers so that potential projects requiring EA under the CEAA are identified early in the licensee's planning process. This training should include how to ensure compliance with the *CEAA Federal Coordination Regulations*;
- b) CNSC staff provides further clarification to industry on the type and level of information necessary to complete a determination that an EA may be required;

- c) The revised CNSC Guidelines on CEAA include information that would assist the industry in providing more forward planning information about potential projects, and a more complete description of undertakings, to provide the CNSC staff with a better understanding of the scope of projects and with enough information to make a timely determination, or more effective overall project planning; and
- d) The process be modified to include CNSC organization of “face-to-face” meetings, video or teleconferences where cost effective, or workshops with proponent, interested members of the public, CNSC staff and other departments to co-ordinate the resolution of issues and approaches at critical junctions of an assessment rather than relying on written correspondence.

Benefits

- a) These process improvements would increase the effectiveness and efficiency of the CNSC’s CEAA program.
- b) Licensees would have tools and information that would assist them in providing more complete information to the CNSC at the early planning stages of a project. This could facilitate earlier determinations as to whether an environmental assessment is required.

For comparative purposes, Appendix C shows how the proposed revised CNSC CEAA program would compare with the existing CNSC CEAA program.

Timing for Recommended Approach

It is suggested that if accepted by the Commission, recommendations 1 and 2 apply to the next new licensing activity that triggers the requirement for an EA under the CEAA. Existing applications that have triggered an environmental assessment prior to Commission approval of recommendations 1 and 2 would continue to proceed according to the existing CNSC Guidelines on CEAA. It is suggested that all other recommendations be actioned immediately upon approval by the Commission.

Related Considerations

Comprehensive Studies

The CNSC process for comprehensive studies is referred to in the current CNSC Guidelines on CEAA. However, given the focus of the CNSC Guidelines on CEAA on screenings and the added complexity of the comprehensive study process, it is felt that greater clarity for the CNSC comprehensive study process would arise from the development by CNSC staff of a Guide for CNSC CEAA Comprehensive Studies. This guide will be developed in the future and the Commission will be briefed on the highlights of the guide.

Panel Reviews

There has not been an environmental assessment panel review of a project licensed by the CNSC since the coming-into-force of CEAA in 1995, however the possibility remains.

Under the CEAA, the approach for a panel review is normally for the Minister of the Environment to appoint a separate panel to review the project that has been referred. Where bodies exist that have established public hearings processes, such as the NEB, cooperative panel reviews have taken place through agreement with the Minister of the Environment. In the NEB case, the Minister of the Environment has appointed temporary members to the NEB.

CNSC staff believes that the extensive Commission hearings process is well suited to be the prominent mechanism for conducting an EA panel review of a project requiring a license under the NSCA, should a panel review be warranted. CNSC staff believes that the above recommendations, combined with a lead role for the Commission in the event of a panel review, would be an appropriate use of the CNSC's hearings process. CNSC staff suggests that discussions commence in 2005 with the CEA Agency with a view to developing a generic Memorandum of Understanding on how the Commission would be involved in a cooperative environmental assessment panel review should such a review be warranted. This approach would take advantage of the Commission's expertise in assessing nuclear related projects and could involve efficiencies if appropriately meshed with the Commission's licensing process. The Commission will be briefed on any consultations and any CNSC decisions related to participation will rest with the Commission.

6. CONCLUSION

CNSC staff recommends that the Commission accept the recommendations set out in this CMD for improving the procedural effectiveness and efficiency of the CNSCs CEAA process. These improvements would result in more predictable and risk-informed approach to the application of the CEAA by the CNSC, integrating the environmental protection requirements of the CEAA and the NSCA in a logical and coordinated manner.

Information requirements for proponents would be made clearer through new guidelines that would attempt to ensure that the level of information produced for a given screening is commensurate with the level of complexity and sensitivity of the project. Public consultation would be more clearly defined and meaningful in nature and would include two opportunities for public engagement in a screening. The new process associated with the improved CNSC CEAA program would be outlined in revised CNSC Guidelines on CEAA. After one year of experience with the process, CNSC staff would prepare a report on the implementation of the process for review by the Commission at a public meeting.

APPENDIX A – *A Description of the Levels of Assessment under the CEAA*
(excerpts from the CEAAgency website)

A screening is a systematic approach to documenting the environmental effects of a proposed project and determining the need to eliminate or mitigate the adverse effects, to modify the project plan or to recommend further assessment through mediation or an assessment by a review panel. A screening is a self-directed assessment where the responsible authority must ensure that the screening of the project is carried out, prepare or ensure the preparation of a report which summarizes the findings of the screening, then determine whether it can take action that will enable the project to proceed. If the screening has identified the need for further review, the responsible authority must ask the Minister of the Environment to refer the project to a mediator or a review panel.

Further review is necessary when:

- it is uncertain whether the project is likely to cause significant adverse environmental effects
- the project is likely to cause significant adverse environmental effects and it is uncertain whether these effects are justified in the circumstances
- public concerns warrant it

Projects described in CEAA *Comprehensive Study List Regulations* require a comprehensive study. These tend to be large projects having the potential for significant adverse environmental effects and public concern. After a responsible authority has ensured the completion of a comprehensive study and has provided mandatory opportunities for public consultation during the comprehensive study process, the Minister of the Environment issues an environmental assessment decision statement, which includes the Minister's opinion about the significance of the environmental effects of the project and sets out any mitigation measures or follow-up program the Minister considers appropriate. The Minister of the Environment also has the power to request additional information or require that public concerns be addressed before issuing the environmental assessment decision statement. Once the environmental assessment decision statement is issued, the Minister refers the project back to the responsible authority for action.

Mediation is a voluntary process of negotiation in which an independent and impartial mediator helps interested parties resolve their issues. The mediator is appointed by the Minister of the Environment after consulting with the responsible authority and the interested parties. Mediation can be used to address all issues that arise in a project's environmental assessment or it can be used in combination with an assessment by a review panel. For example, it may support a panel by bringing the parties together to resolve specific questions, such as the determination of the most effective mitigation measures. The responsible authority must take the mediator's report into consideration before determining the significance of the environmental effects of the project.

A review panel is appointed to review and assess, in an impartial and objective manner, a project with likely adverse environmental effects. A review panel may also be appointed in cases where public concerns warrant it.

It is a group of experts selected on the basis of their knowledge and expertise and appointed by the Minister of the Environment. Such projects may be referred by the responsible authority to the Minister of the Environment for assessment by a review panel. Review panels have the unique capacity to encourage an open discussion and exchange of views. They also inform and involve large numbers of interested groups and members of the public by allowing individuals to present evidence, concerns and recommendations at public hearings. A panel allows the proponent to present the project to the public and explain the projected environmental effects, and provides opportunities for the public to hear the views of government experts about the project.

APPENDIX B – CNSC and NEB EA Screening Processes versus CEEA Requirements

	CEAA REQUIRMENTS	NATIONAL ENERGY BOARD PROCESS	CNSC CURRENT DESIGNATED OFFICER PROCESS	CNSC CURRENT COMMISSION PROCESS
Factors to be considered	Consider factors set out in s. 16(1) of CEEA	Full consideration	Full consideration	Full consideration
Delegation	An RA may delegate any part of the screening or preparation of screening report (s. 17 of CEEA)	NEB staff prepare screening report based on information provided by applicant (e.g. EA studies), subsequent information requests, and comments from other interested parties (including Federal Authorities).	CNSC staff delegates conduct of EA studies and elements of the public consultation but prepares screening report. CNSC staff directs project proponent to implement appropriate public consultation activities throughout the conduct of the screening.	CNSC staff delegates conduct of EA studies and elements of the public consultation but prepares screening report. CNSC staff directs project proponent to implement appropriate public consultation activities throughout the conduct of the screening.
Decision on EA Guidelines	n/a	NEB Board	D.O.	D.O. (unless bumped up to the Commission as per criteria in Appendix A of the CNSC Guidelines on CEEA)
Hearings	Not required for screenings	Mandatory public hearing for projects involving > 40 km of new right-of-way (NEB Act requirement); smaller projects may go to hearing if warranted by public concern or other factors.	No hearings	hearing

	CEAA REQUIRMENTS	NATIONAL ENERGY BOARD PROCESS	CNSC CURRENT DESIGNATED OFFICER PROCESS	CNSC CURRENT COMMISSION PROCESS
Timing of Screenings relevant to Licensing	EA must be done in the planning stages of the project before any irrevocable decision on the project is taken place	Parallel processes (EA process conducted during licensing process) but with sequential decisions	Sequential processes – EA process followed by licensing process	Sequential processes - EA process followed by licensing process
Screening Decision	Responsible authority takes decision following consideration of screening report and any public comments (s. 20 of CEAA)	NEB Board	D.O.	Commission

APPENDIX C – Existing CNSC EA Processes versus proposed CNSC EA Process

	CURRENT PROCESS		PROPOSED PROCESS
	Designated Officer Process	Commission Process	
Preparation of Project-Specific EA Guidelines	CNSC Staff, using EA Guidelines template issued as Appendix B to the CNSC Guidelines on CEAA	CNSC Staff, using EA Guidelines template issued as Appendix B to the CNSC Guidelines on CEAA [opportunity to bump-up based on criteria in Appendix A to the CNSC Guidelines on CEAA]	CNSC Staff, using revised/additional template(s) referred to in Rec. 3b)
Decision on EA Guidelines	D.O.	D.O. unless specific conditions apply and the DO decides to elevate it.	D.O.
Public Participation led by the CNSC	CNSC staff have option to consult on draft EA guidelines (5 of 9 EAs in 2004 were subject to limited public consultation). Public consultation generally occurs on draft screening report (unofficial policy).	Up to four opportunities for public participation 1. Draft EA Guidelines (led by staff) 2. Final EA Guidelines (at public hearing if bump-up criteria apply) 3. EA Screening Report (led by staff) 4. Public Hearing on Final EA Screening Report	Two mandatory opportunities for public participation 1. Draft EA Guidelines 2. EA Screening Report (through public consultation/outreach in the project area where staff has determined that public interest warrants an interactive process).
Public Participation delegated to Proponent	CNSC staff directs project proponent to implement appropriate public consultation activities during conduct of the screening.	CNSC staff directs project proponent to implement appropriate public consultation activities during conduct of the screening.	CNSC staff directs project proponent to implement appropriate public consultation activities during conduct of the screening.

	CURRENT PROCESS		PROPOSED PROCESS
	Designated Officer Process	Commission Process	
Information Prepared by Proponent	Pursuant to EA Guidelines developed by CNSC staff pursuant to EA Guidelines template	Pursuant to EA Guidelines developed by CNSC staff pursuant to EA Guidelines template	Pursuant to EA Guidelines developed by CNSC staff pursuant to revised/additional templates that take into account variations in project size/complexity
EA Screening Decision	D.O.	Commission	D.O.

APPENDIX D – OVERVIEW OF CNSC PROJECT ACTIVITY IN 2004

PROJECT	LOCATION	EA TYPE	EA START DATE	EA APPROVAL DATE	COMMISSION OR DO APPROVAL PROCES
<u>Proposed Modifications to the Blind River Refinery Incinerator, Blind River Ontario</u>	Blind River, ON	screening	Dec. 2004	On-going	DO
<u>Proposal by AECL for the continued operation of the Nuclear Research Universal (NRU) Reactor at CRL</u>	Chalk River, ON	screening	Dec ??, 2004	On-going	Commission
<u>Construction and Operation of facilities for Refurbishment Waste Storage (RWS) by OPG at the Western Waste Management Facility</u>	Tiverton, ON	screening	Dec 10, 2004	On-going	DO
<u>Proposed Bruce A Refurbishment for Life Extension and Continued Operation</u>	Tiverton, ON	screening	Dec 14, 2004	On-going	Commission
<u>Decommissioning of a waste water evaporator facility at CRL</u>	Chalk River, ON	screening		on-going	DO
<u>Decommissioning of a plutonium tower facility at CRL</u>	Chalk River, ON	screening		on-going	DO
<u>Decommissioning of a plutonium recovery laboratory at CRL</u>	Chalk River, ON	screening		on-going	DO
<u>Decommissioning of a pool test reactor (PTR) at the CRL</u>	Chalk River, ON	screening		on-going	DO
<u>Installation and Operation of an Incinerator Mississauga Metals & Alloys Inc.</u>	Brampton, ON	screening	June 25, 2004	on-going	DO
<u>Transfer of Cigar Lake Ore and JEB Mill Expansion</u>	Saskatoon, SK	screening	May7, 2004	<u>CANCELLED</u>	
<u>Proposed use of Slightly Enriched Uranium (SEU) Fuel at the Bruce "B" Nuclear Generating Station</u>	Tiverton, ON	screening	Jan 7, 2004	On-going	DO
<u>Sue E Proposal</u>	McClean Lake, SK	screening	Oct 30, 2003	On-going	Commission
<u>Transfer and Storage of Radioactive Liquid Waste</u>	Chalk River, ON	screening	Aug 12 2003	on-going	DO
<u>Waste Diversion Proposal</u>	Kanata, ON	screening	Jul 3, 2003	June 24, 2004	DO

PROJECT	LOCATION	EA TYPE	EA START DATE	EA APPROVAL DATE	COMMISSION OR DO APPROVAL PROCES
<u>Operation of the McClean Lake Mine and Mill Project</u>	McClean Lake, SK	screening	Apr 17, 2003	On-going	Commission
<u>Expansion of Key Lake Mill and McArthur River Uranium Mine Production Capacity</u>	Key Lake and Waterbury Lake, SK	screening	Jan 7, 2003	On-going	Commission
<u>Construction and Operation of the Cigar Lake Uranium Mine</u>	near Waterbury Lake, SK	screening	Jan 8, 2003	June 30, 2004	Commission
<u>Key Lake Uranium Recycle Project</u>	Key Lake, SK	screening	Dec 8, 2002	On-going	DO
<u>Deloro Mine Site Remediation</u>	Deloro, ON	screening	Jan 16, 2003	On-going	DO
<u>Modifications to Radioactive Waste Storage Facilities at Gentilly-2</u>	Bécancour, QC	screening	Nov 29, 2002	On-going	Commission
<u>Pickering Waste Management Facility</u>	Pickering, ON	screening	July 4, 2002	May 28, 2004	Commission
<u>Decommissioning - Heavy Water Upgrading Plant, CRL</u>	Chalk River, ON	screening	Mar 14, 2002	On-going	DO
<u>Cluff Lake decommissioning</u>	Cluff Lake, SK	comprehensive study	Apr. 15, 1999	April, 2004	Comp. Study
<u>204 Bays Decommissioning</u>	Chalk River, ON	screening	Apr. 1, 2000	on-going	Commission
<u>Construction and Operation of Additional Low-Level Storage Buildings at the Western Waste Management Facility</u>	Tiverton, ON	screening	Sep. 8, 2003	May 13, 2004	DO
<u>NRCAN's Port Hope Long-Term LLRW Management Project</u>	Port Hope, ON	screening	Nov 21, 2001	On-going	Commission
<u>NRCAN's Port Granby Long-Term LLRW Management Project</u>	Port Granby, ON	screening	Nov 21, 2001	On-going	Commission

APPENDIX E

*Review of the Application of the CEAA by the
Canadian Nuclear Safety Commission*

Sussex Circle

October 2004

**Review of the Application of the
Canadian Environmental Assessment
Act by the Canadian Nuclear Safety
Commission**

Sussex Circle

October 2004

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EXECUTIVE SUMMARY

Sussex Circle undertook this review of the Canadian Nuclear Safety Commission's application of the Canadian Environmental Assessment Act at the request of Commission management. The review focused on the efficiency and effectiveness of the Commission's Environmental Assessments (EAs) and the attendant processes that are triggered by the regulatory requirements of the Nuclear Safety and Control Act (NSCA).

The review included extensive interviews with some 38 government (federal/provincial/municipal), industry, industry association and stakeholder representatives.¹

In general, respondents found that EAs related to nuclear safety licensing activities are effective in terms of environmental risk mitigation. Nevertheless, a number of opportunities for EA improvements were identified in the areas of:

- Process streamlining and flexibility
- Risk management approaches
- Consultation and stakeholder relations
- CNSC tribunal/staff roles and responsibilities, and
- Hearing processes

The conclusions and recommendations developed in this review offer suggestions in each of these areas and, if adopted, should improve the efficiency and effectiveness of CNSC's environmental assessment processes.

¹ There were six stakeholder groups that were invited to participate in this review and who declined or chose not to respond to our invitation. Of those who declined, the major reason given was the need for financial support to effectively participate in the review. After consideration, the decision was taken by CNSC to continue with the review as planned.

Sussex Circle would like to thank the CNSC management for seeking our assistance in conducting this important review. Furthermore, we wish to express our sincere appreciation to all those respondents who took the time to participate in the review and provide us with their very thoughtful and helpful input.

INTRODUCTION

In May 2004, the Canadian Nuclear Safety Commission (CNSC)² management asked Sussex Circle to examine CNSC's application of the Canadian Environmental Assessment Act (CEAA). Through a series of interviews with selected government, industry and NGO officials and the examination of relevant organizational, policy and process-related documentation, the review sought to:

- Identify where CNSC practices could be made more efficient and effective in regards to achieving the objectives of CEAA
- Develop concrete suggestions for improvements in achieving CNSC and CEAA objectives

In conducting these interviews, the consultants spoke to some thirty-eight individuals, representing fourteen organizations. (A list of interviewees can be found in Annex A). A series of questions were provided to participants before the interviews (Annex B) pertaining to the efficiency and effectiveness of the current CNSC EA policies and processes. These questions were used to guide the interviews.

This report focuses on identifying possible future enhancements to the CNSC EA process, within the context of the current legislative framework, and taking into account the agency's recently implemented EA guidelines.

² In this document the Canadian Nuclear Safety Commission is referred to as the "CNSC" when referring to the organization and its staff and the "Commission" when referring to the tribunal component of the Commission.

THE CANADIAN NUCLEAR SAFETY COMMISSION

Mandate and Structure

The CNSC is mandated through the Nuclear Safety and Control Act to:

- Regulate the use of nuclear energy and materials
- Protect health, safety, security and the environment
- Respect international commitments on the peaceful use of nuclear energy

The environmental objective of the CNSN mandate is the primary focus of this review.

Organization

The CNSC is comprised of a Commission tribunal of up to seven members and a staff of some five hundred officials. For most licensing, regulatory and policy decisions, the Commission holds public hearings. It also delegates to CNSC staff or Designated Officials (DOs) certain legislated responsibilities for which formal public hearings are not held.

Licensing Process

Issuing and amending CNSC licenses are triggers for activating the application of the CEAA. In the context of CNSC licensing activities, the completion of an environmental assessment and a finding that a project is likely to cause significant adverse environmental effects is a prerequisite for applying the regulatory provisions of the licensing process. Practically all nuclear related facilities, works, processes or operations in Canada require a license issued by the CNSC.

The CNSC has recently approved and issued guidance materials (in the form of templates and guidelines) to assist project proponents with the EA process. Further, steps have been taken to streamline the CNSC EA and licensing processes to continuously improve the organization's regulatory performance.

Screening and Study Processes

The key steps in the CNSC approach to environmental assessment under the CEAA, as triggered by certain NSCA licensing activities, include:

- Determining if CEAA applies to the subject transaction
- Determining the form of EA (screening, comprehensive study, panel review)
- Scoping the EA project
- Developing and approving EA guidelines
- Undertaking the EA
- Rendering an EA decision
 - Commission or Designated Official for screenings
 - Minister for comprehensive studies and panel reviews
- Ensuring follow-up approval of the EA study as a condition for license issue

In addition, the EA process under CEAA, as applied by the CNSC, includes enhanced requirements for consultation with external stakeholders, given the high degree of public interest and sensitivity to nuclear safety matters. To the maximum extent possible, the EA process also builds on existing CNSC regulatory decision-making and consultation mechanisms.

The CNSC, under the NSCA, also has attendant regulatory responsibility for environmental protection. In this regard, the requirements of the CEAA are combined with nuclear safety environmental protection regulatory obligations under the NSCA wherever possible, so as to reduce process duplication.

CNSC policy dictates that the license or project proponent, who is seeking a license or license amendment from the Commission, conducts the supporting, technical EA. The NSCA also requires that this proponent perform the necessary license application work.

This integrated licensing and environmental assessment process becomes somewhat more complex when a number of federal and/or provincial authorities are also involved in EA activities and their input or concurrence is required as part of the assessment approval process. In such cases, EA project management becomes an important feature of the overall licensing transaction in order to ensure that multiple inputs, actions and approvals are appropriately sought and obtained as and when appropriate.

CHALLENGES OF IMPLEMENTING THE CEAA PROCESS

CNSC management are continuously seeking to improve their regulatory and environmental assessment procedures. To this end, they have identified a number of issues related to operating a well performing CEAA process. These issues include:

- Balancing stakeholder expectations
- Stakeholder consultations
- Efficiency, effectiveness and timeliness of decision making
- Organizational roles, responsibilities and relationships of CNSC staff and the Commission
- Harmonization and coordination with other federal and/or provincial EA authorities
- Application of regulatory risk management principles
- EA process cost effectiveness
- Balancing CNSC regulatory independence with proponent responsibility for EA conduct

WHAT WE HEARD

The following section of the report reflects the facts and opinions conveyed to us by the various respondents during the interviews. More than one respondent raised each issue contained in this section.

Respondents were guided in preparing their views for the interviews by the questionnaire sent out in advance (See Annex B).

Licensing/Environmental Assessment Process

The views expressed on the licensing/environmental assessment process include:

- EAs have to be understood within a context of public policy tradeoffs. On the one hand, EAs seek to ensure public safety, environmental protection and putting the public at ease. On the other hand, EAs seek to ensure that investments in nuclear projects continue in order to generate economic and social benefits. Balance among these tradeoffs has to be reasonable for all parties, whether nuclear proponents, opponents or interested parties.
- Most EAs and the way that they are carried out are considered legitimate and useful. Such assessments are viewed as well done and producing sensible mitigation strategies. The delegation to proponents is effective and the process permits public identification and resolution of real and perceived critical risk factors. There remains a view, however, that the license applicant would have done most, if not all, of the recommended mitigation actions without the benefit of an EA.
- Most respondents consider due process as an important element of all EAs, and current practice reflects this. Defined processes, supported by templates and guidelines, have introduced a level of certainty and assisted applicants in terms of planning, timelines, accountability and expectations. Some respondents argue, however, that there still is too much prescription and

insufficient flexibility, and templates and guidelines are interpreted by them as promoting a “One-Size Fits All” approach.

- Assessment scoping is a critical, first component of the EA process and it must be “right” if the subsequent work is to be beneficial within the context of the request being made. In this regard, the iterative approach is appreciated in developing EA guidelines because it sets the framework of the work to be done and it establishes the degree of regulatory burden in terms of process cost and timeliness.
- Several interviewees we spoke to believe that the Agency’s cautious approach to scoping is no longer effective or efficient, given the range of projects and licensing transaction types. These vary from the very routine and minor to those of added or considerable complexity. As an example, it was mentioned that class screenings could be explored along with other streamlining possibilities to deal expeditiously with more routine, minor projects.
- Greater integration of licensing and EA activities is blurring, for some, the distinctions between the EA and licensing processes. This is causing some confusion and potential duplication as new parallel steps are being introduced in both processes. While it is appreciated that the CNSC is working towards a better parallel process in their EA and licensing systems, more should be done to better integrate related licensing and assessment activities.
- There is currently little difference between a CNSC screening and a comprehensive review as conducted by other regulatory agencies. For example, some departments use checklists for routine screenings with minimal consultation. Similarly, and on the other hand, in the opinion of many we spoke to, there is too much consultation associated with a routine CNSC screening EA.

- EAs are not being used as a planning tool because the assessment is introduced too late in the project life cycle, even though one of the stated benefits of applying the CEAA is that the EA can act as a project-planning mechanism.
- Challenges are associated with performing a joint EA either interdepartmentally, inter-jurisdictionally or both. In these situations, project accountability and associated planning and monitoring are imperative to meet process requirements and timelines.
- CEAA has flexibility that can and should be used more by the CNSC. For example, checklists and other streamlined processes for routine proposals need to be used more frequently. But the level of public controversy with regard to CNSC regulatory matters has to be a factor in determining the appropriate EA approach, particularly given the sensitivity associated with potential nuclear safety and environmental impacts.

In summary, we were consistently advised that it is important to have an effective EA process that entails:

- Doing it once
- Doing it well
- Making it meaningful
- Avoiding process duplication
- Using existing information, expertise and previous assessments to their maximum potential

Managing Risk

The views expressed on managing risk include:

- EA decisions, as taken by the CNSC must be based on a balanced consideration of the issues. The issues outlined below must be taken into account in making regulatory decisions:
 - Environmental safety
 - Economic development
 - Social and health concerns
- In addition, many respondents feel that it is time to include cost/benefit analysis as part of the formula, with regulatory burden being one cost factor.
- Non-discriminating EA triggers, i.e. licensing transactions, result in extensive EAs for most projects. There needs to be policy decisions taken with respect to assessment scope or approach. For example, guidance would be helpful on issues such as the assessment of incremental versus cumulative impacts, or the extent to which previous and related EAs can be relied on. The bottom line is that too often, excessive EA work and cost is entailed when compared to the nature of the risk or the change to the license.
- Most proponents believe that there is a limited ability or allowance to rely on previous EAs. They believe existing information, especially for already assessed and approved projects, could be used more often and extensively to inform and support decision-making for similar or incremental projects. Consequently, it is not always necessary to go back to square one and redo associated studies, research and analysis.
- Nuclear safety and environmental risk mitigation is sometimes interpreted as the need to eliminate all potential impacts, with proponents taking a technical-scientific approach and focussing on cost-effective risk mitigation, and stakeholders and communities often taking a technical-emotional

approach and focussing upon the elimination of potential impacts. In these circumstances, common ground amongst all the players is sometimes hard to find.

Consultation and Stakeholder Relations

The views expressed on consultation and stakeholder relations include:

- The CNSC's priority focus on public engagement and participation is appreciated and valued by all and is seen as an integral part of the EA process. In this regard consultations are extensive and inclusive, with involvement being proactively solicited. Consultative processes are multifaceted and make use of written materials, information sessions, Town Hall meetings, etc.
- Many nuclear projects requiring assessment are in the north. Recognition of the differences between the north and the south requires the adoption of innovative and more relevant communications and engagement strategies in northern regions.
- CNSC, as the regulator, should be more visibly involved in the consultative process in order to play and be seen to play its objective, public interest role with proponents and other parties. It is recognized that there is a cost to this presence but participation is important from an agency profile and public confidence perspective.
- All respondents agreed that consultation is important and necessary. In this regard, most industry respondents believe that they do exemplary outreach above and beyond that required by the regulatory process.

- Extensive and recurrent consultations with the same players covering identical or similar nuclear-environmental issues are leading in many cases to:
 - Duplication
 - Consultation fatigue
 - Increased project costs and delays
 - Input predictability (same participants with the same message)
 - Continuing positions being expressed, regardless of the project
 - A small minority getting major presence in some cases
 - Questions being raised as to whether all stakeholders are equal
- Intervener status, and covering the cost thereof, may be required to enable credible technical analysis and input from some stakeholders in order to create a real possibility of influencing the process. Typically these interveners do not have the technical or financial resources to play a meaningful role in the process.
- One option in the EA consultative process that is valued by some is the provision for “peer review” because it helps to objectively and expertly assess and monitor the development of a specific project. In certain provincial jurisdictions, this is a required feature of their EA process.

Roles and Responsibilities

The views on roles and responsibilities include:

- Policy orientation of staff and proponents by the tribunal is critical in terms of setting direction and approach. This is particularly important in terms of members' involvement in scoping and developing EA guidelines to ensure an appropriate EA process relative to the nature of the licensing transaction.
- A lack of alignment of technical/policy views or interpretations was observed by some interviewees between the members of the tribunal and the technical staff with the result that in some cases staff advice to proponents has been at odds with the later position taken by the tribunal.
- Many we consulted felt that the DO approach is effective and shows promise for increased application, both for EAs and for licensing.

Hearings

The views expressed on hearings include:

- Hearings conducted by the members of the CNSC are clearly understood as a centerpiece of the EA process. Respondents acknowledge that the real decision makers are there and that they are able to make their case and receive feedback directly. Interveners also value the hearings because they want to express their views directly to the decision-makers. Also it was pointed out that hearings are best held in the communities where sensitive projects are to be implemented.
- Several respondents felt there is a need though to streamline the hearing process within the regulatory framework to reduce hearing time and avoid confusion around EA and licensing discussions, especially as the two processes become more parallel and integrated. In this regard, licensing hearings often end up replicating inputs heard during the EA phase.

- The CNSC should set criteria to objectively and consistently perform project triage and determine what requires an EA/licensing hearing. Also, the Commission should work towards determining what can be better dealt with by a DO, because hearings require a significant amount of preparation and coordination. This in turn introduces delays because of finite timing windows available to convene Commission hearings.

CONCLUSIONS AND RECOMMENDATIONS

The following conclusions and recommendations are based on the results of the interviews, as well as the consultants' review of relevant legislation, departmental documents and current and proposed EA processes and procedures. They include the consultants' assessment of the priority issues that proponents and interested parties would like to see addressed by the CNSC, followed by recommendations that will address the matters raised.

Licensing/Environmental Assessment Process

In terms of the licensing/environmental assessment process, it is clear that those interviewed believe that there is improved clarity with the introduction of CNSC's EA templates and guidelines.

The EA process is considered, however, to still be too inflexible leading to the conclusion that EA scoping must allow for the categorization of projects or proposals. Delegation to proponents for doing EAs is working but the CNSC must continue to ensure its visibility as regulator throughout the process.

Based upon these observations, it is recommended that:

- Only important or sensitive projects should involve the tribunal
- Increased delegation to DOs be implemented
- More flexibility be allowed when determining the scope of EAs
- More parallel work between EA and licensing processes be designed into CNSC operations
- CNSC officials be present and more visible during all consultation activities

Managing Risk

In terms of managing risk, the CNSC is perceived as a “risk averse” organization that does not use the full range of flexibilities available to it in the CEAA. CNSC should benchmark its EA process against other departments and agencies and constantly seek to streamline and improve its procedures for more routine and minor transactions.

While CNSC decisions are in the public interest, they could be more informed by the various interests and concerns of all players who should be equipped to make value-added contributions to what can be very technical and highly specialized matters.

Finally, risk mitigation, not elimination, should be the desired outcome and focus of the CNSC’s EA work.

Based upon these observations, it is recommended that the CNSC:

- Apply a regulatory risk management framework that
 - Allows for a more flexible categorization of projects, i.e. to permit tailoring the EA process to the risk profile of the project
 - Seeks to achieve optimal, cost effective mitigation of environmental risks
 - Takes into account the needs, issues and concerns of all interested parties
 - Equips interested parties to make a meaningful contribution to the EA process

Consultation and Stakeholder Relations

In terms of consultation and stakeholder relations, it is clear that consultation is viewed by all as an extremely important element of the EA process, with accessibility to decision makers and relevant information being key. Extensive and recurring consultations on any given proposal are generating “fatigue”, particularly when predictable and repetitive inputs are advanced.

There is a lack of consensus on the value of funding interveners and some stakeholders have unreasonable expectations with respect to the role of consultative processes.

Based upon these observations, it is recommended that the CNSC:

- Clarify the objectives around various EA consultative mechanisms so as to better manage expectations
- Streamline EA and licensing procedures to ensure valued input at most appropriate moment
- Ensure that processes allow for optimal access to decision makers and relevant information

Roles and Responsibilities

In terms of roles, it is important to acknowledge the view that improved knowledge by stakeholders of the respective roles and alignment of approaches and policy interpretations between staff and the tribunal would be desirable. In the end such an approach would support a more cost effective EA process in some situations for proponents by providing for more consistent direction.

Several interviewees feel that there is an excessively legalistic approach taken on many routine EA transactions and that greater delegation to DO's could improve efficiency.

Based upon these observations, it is recommended that the CNSC:

- Increase communication between the staff and the tribunal to enhance mutual understandings of respective interpretations and positions, that in turn should result in more aligned approaches when dealing with stakeholders
- Delegate more EA/licensing files to DOs

Hearings

In terms of hearings, the potential exists for fewer projects to be reviewed by the tribunal and to reduce the number of duplicative steps in the EA and licensing processes.

Based upon this observation, it is recommended that the CNSC:

- Streamline, to the extent possible, hearing processes so that similar EA and licensing issues are dealt with concurrently
- Develop criteria to ensure consistent triage of proposals, that could lead to the application of scalable templates and guidelines relative to the nature and scope of the proposal
 - This in turn could lead to more delegation of work to officials and fewer hearings

ANNEX A

List of Interviewees

Stakeholders:

- Janice Szwarcz, Senior Planner, Municipality of Clarington
- Betty Hutchinson, Manager, Northern Mines Monitoring Secretariat, Gov't of Saskatchewan
- Duncan Moffett, Principal, Golder Associates, Ltd.
- Kenton Kinney, Policy Analyst, Policy and Planning, Environment and Local Government, Gov't of New Brunswick
- Rick Austin, Mayor, Port Hope

Major Licensees:

- Al Shpyth, Director, Government Relations, Cameco
- Martin Klukas, Section Head, Environmental Assessment, Chalk River, AECL
- Ken Dormuth, Director, Environmental and Radiological Sciences, AECL
- Murray Elston, President and CEO, Canadian Nuclear Association
- Steve Coupland, Director, Environmental Affairs, Canadian Nuclear Association
- Bob Pollock, Vice President, Environment, Health and Safety, Cogema Resources
- Cedric Jobe, Vice President, Nuclear Regulatory Affairs Division, OPG
- Ken Nash, Vice-President, Nuclear Waste Management Division, OPG
- Bruce Power:

- Frank Saunders, Vice-President, Safety and Environment
- Bill Schnurr, Senior Legal Counsel
- Ken Talbot, Executive Vice President, Chief Engineer
- Robert Stepaniak, Section Manager, Environment
- Terry Brown, Senior Technical Officer, Environment
- Dan McArthur, EA to the VP, Safety and Environment

CNSC:

- Jim Clarke, Executive Director, Regulatory Affairs
- Barclay Howden, Director General, Directorate of Nuclear Cycle and Facilities Regulation
- Henry Rabski, Director, Processing Facilities and Technical Support Division
- Karen Moore, Senior Counsel, Legal Services
- Maury Burton, A/Director, Bruce Compliance and Licensing Division
- Carmen Ellyson, Coordinator, Acts and Regulations, Regulatory Management and Government Relations
- Kevin Scissons, Director, Uranium Mines and Lands Evaluation Division
- Ken Lafrenière, A/Director, Program Development and Integration Division
- Christopher Taylor, Manager, Commission Technical Support Secretariat
- Heather Jarrett, Environmental Assessment Specialist
- Guy Riverin, Environmental Assessment Specialist
- François Leduc, Project Officer, Wastes and Geosciences Division

CEAA

- Robert Connelly, Acting President
- Steve Burgess, Director, Regional Liaison and Guidance
- John McCauley, Director, Legislative and Regulatory Affairs

Natural Resources Canada:

- Sharon Baillie-Malo, Environmental Policy Analyst, Uranium and Radioactive Waste Division
- Liviu Vancea, Senior Policy Advisor, Environmental Protection, Sustainable Development and Environment
- Catherine Badke, Senior Environmental Assessment Officer, Office of Environmental Affairs
- Dominic Cliché, Environmental Assessment Officer, Office of Environmental Affairs

ANNEX B

Interview Questions and Areas of Inquiry

Effective:

- Is the CNSC conducting EAs on the types of projects that warrant such a level of evaluation? In other words, is the CNSC expending resources unnecessarily on projects that have a known and typically low level of environmental impact, and/or are certain environmentally significant nuclear projects that should be subjected to the EA process not being captured by the process?
- Do the CNSC's EAs cover an appropriate scope (of project and assessment factors)? (In its EAs, is the CNSC identifying and examining the issues of most importance?)
- Are the issues being examined at a sufficient level of detail?
- Are the CNSC EAs identifying appropriate impact mitigation strategies?
- Do the CNSC's EAs normally contribute to environmental improvements in the project designers?
- Does the CNSC provide for appropriate public involvement in its EAs? (Does the CNSC engage the public at the right times and on the right topics when conducting EAs?)
- Does the CNSC make a genuine effort to consider and incorporate into its EAs the ideas and inputs of interested stakeholders i.e, does the consultation make a difference?
- Does the CNSC's practice of delegating work to the proponent help or hinder the effectiveness of the EAs?

- How could the CNSC improve the effectiveness of its application of CEAA?

Efficiency:

- Are the CNSC's EAs and licensing processes compatible and mutually supportive, or are they duplicative?
- Are the CNSC's EAs generally started early enough in the project planning and design stages (this could also be for "effectiveness")?
- Is the CNSC's process of approving the scope of EAs efficient, i.e., are the respective roles of the Commission (tribunal) and the CNSC staff Designated Officers necessary, adequate and appropriate?
- Does the CNSC complete its EA projects in an appropriate time frame (i.e., not too rushed, and not too drawn out)?
- Does the CNSC appear to have adequate control of the EA projects, i.e., are the tasks, time frames and resource requirements articulated in advance and well managed throughout?
- Does the CNSC make adequate use of all available relevant information in conducting EAs?
- Are the EA study methods effective and commensurate with the nature and importance of the issues?
- Is the CNSC process of approving the results of EA Screening Reports appropriate. i.e., is the current use of the Commission (tribunal) and CNSC staff Designated Officers appropriate, efficient and necessary?
- How could the CNSC improve its efficiency in terms of how it applies CEAA?

Openness and Transparency:

- Are stakeholders adequately notified of EAs commencing?

- Are stakeholders adequately informed about how they can participate in the process?
- Is information about the projects and the studies being conducted made reasonably accessible to stakeholders who wish to participate?

Clear and Actionable Framework:

- Stakeholder Understanding of the Process:
 - Is the CNSC guidance on the application of CEAA to nuclear project licensing clear and adequately detailed?
 - Is it clear which nuclear projects may, and which may not, be subject to EAs pursuant to the CEAA?
 - Is it clear how a final decision on the results of an EA is made and who makes the EA decision in different cases?
 - Is it understood how and when the CEAA process fits into the CNSC's licensing process?

APPENDIX F

Disposition Report of External Comments Received
on Draft Commission Member Document

DISPOSITION REPORT OF EXTERNAL COMMENTS RECEIVED ON DRAFT COMMISSION MEMBER DOCUMENT

Section	Reviewer	Comment	Response
General	NRCan	"The CMD contains recommendations that will improve the CNSC application of the CEAA by increasing the efficiency, transparency, timeliness and predictability of the process."	No action requested.
		"The CMD builds in flexibility to allow for a more extensive EA process if it is warranted. The CNSC EA process would be further improved, with respect to meeting Smart Regulation objectives, if it built in more flexibility to allow for a shorter and more stream lined EA process if warranted. As the Sussex Circle highlights, in EA balance is important to ensure public safety and but also to generate economic and social benefits."	The current CMD achieves these objectives while maintaining and in some cases improving the effectiveness of the process.
		"The CMD would be improved if the usefulness of applying a risk management framework to EA was more clearly reflected and integrated into the CMD recommendations. This point was stressed by the Sussex Circle report and by NRCan in its preliminary comments provided on November 18, 2005. Smart regulation supports risk mitigation not elimination and a consistent approach amongst regulators for risk management."	The current CMD contains several elements that would make the CNSC's EA program more risk-informed.
		"Multiple RA coordination issues, in particular when the CNSC is not the lead RA such as in the cases of the Port Hope and Port Granby projects, are not addressed in the CMD."	There will be opportunity to further clarify multiple RA issues in the revised CNSC Guidelines on CEAA.
		"Smart Regulation stresses the efficiency benefits of concurrent regulatory processes. The CMD indicates the CNSC hearing process may be appropriate if a panel review is warranted and notes there would be efficiencies if appropriately meshed with the Commission licencing process. NRCan supports concurrent regulatory processes such as for panel review substitution or for other Commission involvement in EAs."	This issue would be further explored in any discussions with the CEA Agency relating to a possible Memorandum of Understanding on how the Commission would be involved in a cooperative environmental assessment panel review.
		"The CNSC process for a comprehensive study-level environmental assessment is not addressed. Although the CMD commits staff to developing a guide for the comprehensive study process there is no indication of when this may be available."	The timing of this is to be determined in the near future.
		"The CMD does not make recommendations to further investigate reducing the number of projects needing to undergo EA."	This was not raised during the course of the CNSC's review as a significant issue.
	AECL	"AECL supports the CNSC's view of the effectiveness and efficiency of its program to fulfill its responsibilities under the Canadian Environmental	No action requested.

Section	Reviewer	Comment	Response
	Sierra Club of Canada	Assessment Act (CEAA). We appreciate the opportunity to comment on draft CMD[1] and the recommendations for an improved process.” “The fundamental flaw with the current draft recommendations on improving the CNSC’s implementation of CEAA lies with who was not consulted. No environmental, public interest or community groups participated in the Sussex Circle consultation that served as the basis for the current recommendations.” “...it is obvious that financial constraints prevented environmental, public interest and community groups from participating in Sussex Circle’s interview sessions. A simple and just response to this circumstance would have been to offer such organisations a stipend of, say, \$ 100 to compensate for their staff time.” “...recommendations for improving the CNSC’s application of CEAA may compound problems of civil society alienation and the perception that the CNSC is beholden to industry.” “This is illustrated by the fact that nowhere in the current recommendations is there mention of the Canadian Environmental Assessment Act’s principal goal – upholding the public interest. The language that dominates is ‘efficiency’ and ‘consultation fatigue’, all the common complaints of industry.” “...ask why the CNSC chose to directly seek the advice of the Canadian Nuclear Association, the industry lobbying organisation, on how it could improve its fulfillment of CEAA when no parallel process was established with the environmental community? The CNSC could have, for instance, approached the Canadian Environmental Network, which has a caucus dealing specifically with environmental assessments, to help facilitate input from the environmental organisations.” “Given the obvious problems with the consultation process, the Sierra Club of Canada recommends that these draft recommendations not be implemented at this time.”	Opportunities were provided to a balanced set of stakeholders, including environmental, public interest and community groups, at several stages in the development of the CMD. These stages included interviews as part of the Sussex Circle study, a written comment period on the final Sussex Circle study, and written comments on a draft CMD. With respect to the Sussex Circle study, Sussex Circle notes in its Executive Summary that “there were six stakeholder groups that were invited to participate in this review and who declined or chose not to respond to our invitation”.

Section	Reviewer	Comment	Response
		“The Sierra Club of Canada also recommends that the CNSC implement the recommendations of the Standing Senate Committee on Energy, the Environment and Natural Resources. » “Although the Sierra Club of Canada supports the application of a planning tool, the Sierra Club of Canada is deeply concerned that the CNSC is using CEAA in such a way only when it is politically expedient for the proponent.” “...billion dollar costs underline the hard political reality that the CNSC must establish policies to mitigate – that is, how will the CNSC ensure that proper public engagement is not undermined by the billion dollar business interests of its licensees? The current draft recommendations make no attempt to address this problem.” “...the Standing Senate Committee on Energy, the Environment and Natural Resources recommended that the CNSC retain “for itself the public consultation process, not delegating it to a project proponent.” Because the high-levels of contamination and obvious motivation of the licensee to defer costs, AECL’s clean up plan for Chalk River is an obvious example of where the proponent should never be allowed to control the consultation process. The current draft recommendations, however, are mute on this subject. If the CNSC is really committed to implementing CEAA as a planning tool, it should propose subjecting AECL’s decommissioning plan for Chalk River Laboratories to a Panel Review. A Panel Review would allow for the highest level of transparency and a consultation process independent from the proponent.”	The CNSC is committed to using CEAA as a planning tool.
	Bruce Power	“Bruce Power believes that overall, the proposed changes are a positive step forward and implementation should proceed as quickly as possible. The CNSC needs to rationalize the various assessment tools available for determining the impact of our operations on the environment. In addition to the major EA work that Bruce Power has done over the past 4 years, we have at least two other significant tools that we have used to assess environmental impacts. We have: • conducted an Ecological Risk Assessment (ERA) of our operations and it	CNSC staff determines project scope in accordance with the requirements of CEAA. CEAA provides for existing information that may be relevant to a project to be considered in the assessment of that project. CNSC staff will determine if further guidance on this issue can be included in the revised CNSC Guidelines on CEAA.

Section	Reviewer	Comment	Response
		has been accepted by CNSC staff, done a comprehensive Environmental Site Assessment (ESA) of our entire site. Furthermore, the ESA provided the base-line for our current ongoing soil and groundwater monitoring program. When determining the scope of EAs, the CNSC has usually not taken into consideration all the previous work performed to demonstrate the environmental effects on our operations. This has often resulted in an unnecessarily broad scope, major EA programs and needless redundancy; with no new or additional environmental impacts being identified. The CNSC has accepted our ERA and in doing so has accepted this as the reference baseline of the effect of all site operations on the environment. Scope for new EAs required for specific proposals should <u>only</u> consider the incremental changes above and beyond the established baseline. Unfortunately, the trend with EAs to date has been to apply that process independently of all other related work completed and underway. This not only results in huge redundancy, but wasteful of resources that could be used to affect true environmental performance.”	
	Citizens for Renewable Energy	“If the final recommendations in this Draft document regarding “improving the procedural effectiveness and efficiency of the CNSCs CEAA process” is accepted by the commission then CFRE will have some hard decisions to make in regard to continuing its intervenor role in CNSCs public hearings.”	No action requested.
	Canadian Environmental Law Assoc.	“We request that our comments be provided to the Commission members along with any other information to be considered in this respect.” “CELA recommends that the Commission not proceed with the draft recommendations at this time, both in view of the inadequacy of the content of the recommendations as will be discussed .. and in view of the inadequacy of the consultation process.” “... the recommendations are significantly proponent-centered. A review of the Sussex Circle report indicates that no environmental non-government organizations, public interveners or other members of the public were consulted in preparation of the report. The report’s credibility is greatly reduced as a result.	Comments are being provided to the Commission through this Appendix. Opportunities were provided to a balanced set of stakeholders, including environmental, public interest and community groups, at several stages in the development of the CMD. These stages included interviews as part of the Sussex Circle study, a written comment period on the final Sussex Circle study, and written comments on a draft CMD.

Section	Reviewer	Comment	Response
		CELA noted that apparently six ENGO's were asked to participate but declined due to lack of funding... This discrepancy highlights the need for intervener or participant funding in CNSC's consultative activities. It is not acceptable to continue a process as significant as this one without making it possible for ENGO's who have experience in accessing the CNSC's process to participate in the review. CELA also notes ...that the instant consultation is not available on the CNSC's website." "Apart from the Sussex Circle report, it does not appear that CNSC staff consulted the public more broadly prior to preparing these draft recommendations."	
		"One of the major themes that is reiterated in the draft recommendations in support of the suggested changes is that there is "consultation fatigue" from the current process. CELA disputes this finding. It appears to be based on the Sussex Circle report. Since that report consulted primarily proponents and some municipal staff, it is not reflective of the views of the affected public. There were not an inordinate number of screenings conducted by the CNSC over the last year. There have been no panel reviews. No changes in the application of CEAA regarding CNSC decisions should be made because of the perception that there is consultation fatigue. To the extent that there is true consultation fatigue, it is because interventions are not perceived to make a difference in the final decision not because there is too much public consultation."	The text for issue 2 has been modified to indicate that consultation fatigue is being reported by some stakeholders (the previous text implied that all stakeholders were reporting this).
		" CELA notes with great disappointment that the 2001 Senate Committee Interim Report Recommendation 9 has not been followed to date: <i>"The Committee recommends that the Comprehensive Study List Regulations of the CEAA be amended to include the restart of a nuclear power reactor following a prolonged shutdown of the reactor or significant modifications to the reactor and/or the station."</i> To continue to treat these decisions at a screening level only contravenes the spirit and intent of CEAA. To fail to subject these decisions to a panel review exacerbates this issue. .. The credibility of the CNSC and of the federal CEAA	CNSC staff does not concur with this view. In addition, it should be noted that amendments to regulations under the CEAA are the responsibility of the CEA Agency and the Minister of the Environment.

Section	Reviewer	Comment	Response
		process is at stake when the public observes only the opportunity to participate in a screening level assessment in these decisions. The recommendations by the CNSC staff to the Commission, such as to delegate additional responsibilities to Designated Officers and leave the Commission out of the subsequent decisions under CEAA... will further undermine public confidence that these projects are receiving adequate environmental scrutiny."	
	Cameco	"[An] issue contributing to excessive regulatory timelines... is, the CNSC's tendency to take a narrow approach to statutory interpretation of the scope and nature of the duties imposed on it under the NSC Act and CEAA, respectively. From a functional perspective, it appears that the CNSC considers its duties under these statutes to be discrete... However, the public interest objectives of safety, environmental protection and economic development are too interrelated to be easily and practically segregated. Further, from a legal perspective, they need not be segregated. ... consideration should be given to establishing procedures for the consolidated review of environmental assessments and licensing applications for new projects. The objective of such a consolidation would be to ensure a single decision point, either at the DO or Commission level, and with or without a public hearing. ... In Cameco's opinion, this can be accomplished without statutory amendment if the CNSC adopts a broader reading of its responsibilities under both CEAA and the NSC Act. .. For established precedent of a regulatory tribunal undertaking a hearing under two pieces of legislation, the CNSC has to look no further than the NEB." "Alternatively, rather than combining these processes under the CNSC's existing legislative authority, the legislation could be amended to clarify that the CNSC has a public interest mandate. As a function of the mandate, the CNSC should address both the EA and licensing in a single proceeding and thereby ensure that the interrelationship of safety, environmental protection and economic development is reflected in the proceedings examining these matters. If legislative amendments are contemplated, the recent streamlining of the British Columbia's Environmental Assessment Act, S.B.C.2002, c, 43... process serves as an instructive model for the CNSC in other respects."	CNSC staff is committed to using CEAA as a planning tool and is not of the view that a parallel EA and licensing process would meet this principle.
		"Cameco would be more that willing to work with you in any way we can to	No action required.

Section	Reviewer	Comment	Response
		assist you in developing appropriate guidelines that achieve the CNSC's objectives in a balanced and appropriate way. We would also be more than willing to work with you in identifying and advancing structural solutions... that may provide further remedies to the concerns we identified. Cameco believes the federal government's commitment to "smart regulation" provides an opportunity for such consideration."	
	Canadian Nuclear Association (CNA)	"The CNA would like to express its appreciation to the CNSC for undertaking this initiative, as we believe environmental assessments are an essential part of sound planning and are strongly supportive of the CNSC's efforts to ensure an effective and efficient process." "With respect to the specific recommendations, the CNA is generally supportive of all of the recommendations but have added a few comments that we believe will strengthen the CMD." "We look forward to a more effective and efficient process with the implementation of these recommendations and would like to suggest that consideration be given to a periodic (bi-annual) review to see if adjustments are required."	After one year of experience with the revised process, CNSC staff would prepare a report on the application of the process for review by the Commission at a public meeting.
		"While we are encouraged, by the steps outlined in the draft CMD, we believe it is important to recognize that larger issues related to the existing Canadian Environmental Assessment Act (CEAA) framework can also be barriers to an effective and efficient assessment process. We recognize that these issues are beyond the scope of this review, but we believe it is important for the CNSC to continue to pursue opportunities to improve CEAA with respect to projects for which the CNSC is the Responsible Authority. We note the ongoing discussions regarding "smart regulation" and encourage the CNSC to support improvements that arise through that process."	CNSC staff are closely monitoring and engaging in discussions regarding "smart regulation".
	Canadian Environmental Assessment Agency	"Generally, the draft recommendations suggest positive changes to ensure the appropriate level of effort is made with respect to federal EAs, taking into account the need for varying levels of detail and the necessity of public involvement."	No action required.
		"I note the report suggests pursuing discussions with the Agency on the	CNSC staff note and appreciate the openness of the CEA Agency to

Section	Reviewer	Comment	Response
		possibility of cooperative panel reviews. We would be happy to engage in those discussions.”	engage in such discussions.
		“Although broader issues relating to consultations with Aboriginal stakeholders are not dealt with in the recommendations, being outside the scope of EA, it is important to remember that the Crown cannot delegate this consultation responsibility to the proponent. It would be interesting to know where and how Aboriginal consultation fits within the Commission processes and whether the EA process is used.”	Agree. CNSC staff understands the obligations with respect to consultation with Aboriginal peoples.
Summary	Canadian Environmental Law Assoc.	“...CELA is concerned that the specific proposal by the CNSC staff risks pre-determination of the very issues in question. The level of risk of a project should not be determined until after it has gone through the screening process (if it is a matter to which screening applies), not after. Similarly, ascertaining the complexity of the project should be a part of the screening process itself, not a pre-determination that reduces the amount of information supplied to the CNSC.”	CNSC staff is of the view that the proposed approach would provide for an appropriate level of scrutiny.
		“It is not appropriate to compare the fact that the CNSC screenings are more extensive than some other federal regulatory decisions. The activities at issue are potentially extremely high risk and deserve intense scrutiny.”	
		“The staff recommendations also call for “more focused” public consultation. However the risk to this is that there will be less public consultation. Firstly the proponent, or even the CNSC if they were conducting the public consultation, may invite or target those whom they wish to consult on the project and not those whose views may be more negative. Secondly, even where the proponent makes every effort to be even-handed, people who would want to be part of the consultations may be left out simply because they are not reached by or known to the consulting body.”	The CMD proposes public consultation opportunities that would be more clearly defined and meaningful in nature, with two guaranteed CNSC-led opportunities for public engagement.
	Cameco	“Directionally, Cameco agrees with each of these recommendations [4 bulleted list] and believes they do offer opportunities for improvement to the CNSC’s current EA program. However, we believe that additional opportunities exist for making improvements to the CNSC’s EA program as the recommendations do not sufficiently address the fundamental and structural issues that have led to delays in the consideration of project proposals by the CNSC. These issues are most apparent in the case of minor projects (i.e. those which require only	No action.

Section	Reviewer	Comment	Response
		screening level EAs under CEAA). As shown in Appendix “D” of the draft CMD, the environmental assessment and licensing timelines for screening level Eas... under the jurisdiction of the CNSC are typically measured in years, rather than weeks or months as is the case in other industries... Nuclear energy and mining approvals in countries such as Australia are dealt with in a more efficient and expeditious manner ... Similarly, energy and mining approvals under other statutory regimes ... appear to have far shorter timelines than is the case under the NSC Act/CEAA paradigm. In Cameco’s view the difference in approval process efficiency is not simply a function of the inherently conservative approach taken to the regulation of the Canadian nuclear industry. Rather, it is the result of an overly complicated approach to the procedures used to administer the CNSC’s two statutory mandates”	
Definitions	NRCAN	“In the section on definitions, the CNSC may want to clarify the relationship of CNSC EA guidelines with respect to CEAA terminology such as project scope, factors to be considered in a screening and the scope of the factor to be considered.”	It is proposed that this clarification be considered during the revision of the CNSC Guidelines on CEAA.
3.1 Application of the CNSC CEAA Program	AECL	“We support the CNSC efforts (Section 3.1) to reduce duplication between environmental regulatory obligations and CEAA obligations. We suggest that duplication can be further reduced by greater recognition in the EA of existing compliance programs as opposed to requiring quantitative estimates of environmental performance levels. The preparation and review of both a proponent’s EA study report and a CNSC screening report is a serious duplication in the process. Preparation and public review of a single report only should be required for the sake of efficiency and clarity.”	The CEAA permits the use of any existing information that is relevant during the conduct of a screening. CNSC staff does not agree with the suggestion to combine the proponent’s EA study report and the CNSC screening report.
	Sierra Club of Canada	The Sierra Club of Canada believes that the inclusion of these projects [in Bruce’s letter of intent] runs contrary to the definition of a ‘project’ under CEAA. CEAA states that a project is “...any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work...”. The additional projects included in the current scoping are only ‘potential’ projects; they have not been ‘proposed’ by the proponent and are therefore not a project under CEAA.	Comments not specific to CMD.
	Canadian	The CMD “discusses the recent initiative to encourage AECL to coordinate	CNSC staff does not concur with this interpretation.

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	Environmental Law Assoc.	applications by combining several proposals into one letter of intent. The alleged advantage is that several projects are completed under one parallel EA process and that environmental effects are identified earlier in the process. While CELA supports early application of CEAA, CELA is concerned that this approach contravenes the definition of “project” to which CEAA applies... Until a project is “proposed” is does not meet CEAA definition and the responsible authority cannot carry out its CEAA mandate.”	
	Bruce Power	“Page 7,8, Bruce Power believes that it would be beneficial if the CNSC continued to design and present courses and technical workshops to proponents on the CNSC requirements and expectations of EAs.”	CNSC will continue to deliver these workshops.
	Bruce Power	“Page 8, re “Proponent amendments to the Exclusion List Regulations of the CEAA resulted from this consultation”. Would it be possible to add and Appendix to the CMD explaining what these amendments are and when the new Exclusion List will be issued?”	An appendix to this effect has not been added to the CMD. The CEA Agency should be contacted for the current status of amendments to the Exclusion List Regulations.
3.3 Review of Select Projects Against the CNSC Guidelines on CEAA	AECL	“Page 9, Paragraph 1, Review by the CNSC and the CNA RAC: This draft CMD indicates the results of the CNSC and CNA RAC review effort will be reported in Section 4. Section 4 contains no such discussion.” “Page 9, Paragraph 2, Review of Three EAs for Identifying Improvements to the EA Process: An explanation should be provided for the selection of the EAs for this review.”	The issues raised by the review of the three projects are listed as issues 5 and 6 in section 4. The three projects were selected to ensure general representation of the range of projects licensed by the CNSC.
3.4 CNSC and NEB EA Screening Processes versus CEAA Requirements	Canadian Environmental Law Assoc.	“CELA supports the approach of comparing the CNSC process of carrying out its CEAA mandate to the National Energy Board process of carrying out its CEAA mandate. However, CELA does not agree with the conclusions reached in the staff recommendations as a result of this comparison. A fundamental difference in the two approaches is that the NEB itself carries out the public consultation pertaining to the CEAA over decisions before it. This is a far better approach and CELA recommends that the CNSC stop its process of delegating the public consultation process under CEAA to the proponent. ... This issue was also dealt with in the Standing Senate Committee on Energy , the Environment and Natural Resources Interim Report, June 2001, at Recommendation 10 ...” “The Senate Committee requested that the appropriate Ministers respond to the recommendations in that report as soon as possible. The draft recommendations to the CNSC on its CEAA process fail to address any	The proposed approach would include two guaranteed opportunities for public participation during a screening that would be led by CNSC staff. This would be in addition to any public participation activities led by the proponent at their own initiative or that had been delegated to them by CNSC staff as permitted under s.17 of the CEAA.

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		aspect of this recommendation..." CELA recommends that the CNSC change its CEAA process in accordance with Recommendation #10 of the Senate Committee's Interim Report of June 2001, including that the CNSC retain for itself the public consultation process and not delegate it to a project proponent."	
	Cameco	"Appendix B of the draft CMD provides a comparison as to how the National Energy Board (the "NEB") conducts environmental screenings of minor projects versus the CNSC processes that are currently employed at the designated officer and commission levels. From this comparison it is apparent that while the NEB process recognizes the fundamental difference between a screening and comprehensive study (or Panel Review) assessment under the CEAA, the CNSC processes blur this distinction. For example, the current CNSC process requires the public to become involved at three stages: in the preparation of draft EA guidelines (either lead by CNSC staff or through a public hearing); in the preparation of a draft environmental screening report; and once again, on a hearing with respect to the final EA screening report. These are over and above the public consultation and hearing processes undertaken for the licensing of the project pursuant to the NSC Act. Even for EAs undertaken by a designated officer in the CNSC process, multiple requirements for public consultation can be imposed as a matter of discretion... These public processes are not required as a matter of law under CEAA other than the step of soliciting comments on the environmental screening report prior to proceeding to make a decision... on the approval application before the RA. The overall result is a process for the preparation of an environmental screening report that is not commensurate with the level of assessment required by CEAA. This substantially lengthens the time required to complete the EA process or screening report projects under jurisdiction of the CNSC as compared to other agencies.	CNSC staff recognizes that public participation is not a legal requirement for a CEAA screening, but is of the view that the proposed approach with two opportunities for public engagement is appropriate in the CNSC context.
4. Areas Identified for Improvement	NRCan	"Under Issue on page 11, we would recommend using a different terminology than "low risk and high risk project" with respect to screenings. It raises the question of why any high risk projects are screenings and whether they should be referred to the Minister of Environment and a review panel. Rather, we	Agree, changes made as suggested.

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		recommend referring to projects with a low or high potential for environmental effects.”	
	AECL	“Risk Informed Approach: We strongly support the development of a more risk-informed approach for screening level environmental assessments (EAs). As noted in the CMD, the current EA guidelines template: 1) does not accommodate low-risk projects; and 2) results in Eas reporting on issues having little of not bearing on the EA decision. We support the development of tabular screening reports for low-risk projects. The criteria for low-risk projects should be defined in the CMD.” “Timeliness of the EA process: The CMD identifies the issue of delays in review of EA documentation (Issue 6) but does not provide recommendations to address the issue. In our experience, delays in the EA process have largely been the result of unacceptably long time frames for the CNSC/Federal Department reviews of technical EA Study Reports., We recommend that time lines be defined for the major steps in the EA process. The EA Guidelines should document the anticipated EA schedule from issuing the Letter of Intent through to the EA decision. The documented schedule should be considered to be an obligation on all participants.”	The request for criteria for low-risk projects will be considered during the revision of the CNSC Guidelines on CEAA. CNSC staff will consider the inclusion of timelines during the revision of the CNSC Guidelines on CEAA.
	Sierra Club of Canada	“In the section entitled Areas Identified for Improvement, it is noted that the Sussex Circle identified that a common complaint stakeholders (that is, the nuclear industry) is the problem of ‘consultation fatigue.’” “It should not be assumed that a decision not to participate in such a process is ‘consultation fatigue.’ A question that the CNSC should ask itself is whether non-governmental organisations, the public and affected communities feel that there is any utility in participating in CNSC ‘consultations.’” “And as noted, there is a larger question of whether the CNSC is providing public interest organisations capacity to participate in such proceedings in a useful manner. A common complaint of environmental organisations is that the CNSC should provide intervenor funding.” “Instead of proceeding with the current recommendations, CNSC staff should	The proposed recommendations would improve both the effectiveness and efficiency of public consultation in an environmental assessment. One of the two mandatory public consultation opportunities will occur in the project area where CNSC staff has determined that public interest would warrant an interactive consultation process.

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		consider informing the Commission of the problems they encountered in procuring input from civil society. The Commission, then, may wish to consider how it can more effectively 'engage' the public. The word engagement is important. If civil society intervenors do not feel that their participation is being taken seriously they will simply choose not to participate." "Contrary to the recommendations for more 'efficiency' in CNSC consultations, these examples show that the CNSC should instead be examining how it could more effectively engage the public. This will not be solved delegating the administration of the EA process to CNSC staff with scoping and screening decisions made by the Designate Officer. That is to say, fewer hearings." "Again, the Sierra Club of Canada is concerned that the current recommendations misconstrue effective stakeholder consultation. Less is not necessarily more."	
	Cameco	"..the current practice of the CNSC is to consider EA and project licensing matters in a sequential basis. ... Cameco considers that this sequential consideration of environmental assessment and licensing matters is unnecessary and inconsistent with comparable regulatory practices... It is open for the CNSC to proceed with any process antecedent to the issuance of a licence or licence amendment without an EA having been completed, so long as the decision to grant a licence is not made until the EA is complete... it is open for the CNSC to adopt a streamlined and co-ordinated approach to EA and licensing applications that will lead to greater efficiency. The approach taken by the NEB in this regard is described in summary fashion in Appendix B... For screening level projects, the NEB requires project applicants to include information relevant to the environmental impacts of the project in their application... Those requirements are described in the NEB's Guidelines for Filing Requirements... The Guidelines for requirements also address the issue of public involvement. ... Significantly, not all applications to the NEB for project approval require public hearings. As a matter of practice, major projects will proceed to a public hearing whereas minor projects will not. ... The procedures used by the NEB to discharge its mandate under the NEB Act as well as its duties as a RA under CEAA are, in Cameco's view, more efficient than the CNSC's current practice. They are also more	CNSC staff is committed to using CEAA as a planning tool and is not of the view that a parallel EA and licensing process would meet this principle.

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		efficient than the improved procedures suggested in the draft CMD.” “The NEB is not alone in its practice of considering EA and licensing applications concurrently as this has been the approach employed provincially by the Alberta Energy and Utilities Board... and its predecessor regulators for a number of years. It is also used in British Columbia for projects subject to the Environmental Assessment Act, S.B.C.2002, c.43.”	
5. Recommendations / General	John Morand (Port Hope Municipal Council)	“Your Draft recommendation should read that before a decision is made as to which process is to be followed that the municipal council in the impacted community be asked for input and a recommendation on the process to be followed – DO or bump-up to an EA process rather than CNSC staff undertaking an internal process which may or may not involve the public. This would avoid many potentially contentious issues and claims that the CNSC is not seeking input from the community on the method of screening and the scoping. The community from a personal standpoint should always be involved in the scoping as the facilities are located in our community and our streets are used for transportation of goods and our residents property values are at risk.”	The proposed approach would provide an opportunity for an affected community to comment on the draft project-specific EA guidelines document.
		“I am also of the opinion that the process should provide for the community to be involved in the scoping as it is the community that accepts the risk not the CNSC or the company and it would appear that the community has little or no input into ALARA at this point or indeed managing risk.”	The proposed approach would provide an opportunity for an affected community to comment on the draft project-specific EA guidelines document.
	AECL	“Public Consultation: The recommendation (Section 5) for the CNSC-led public consultation at the designated officer level for both the EA guidelines and the draft screening report represents an increase in public consultation requirements. It is not clear why this would result in less risk of “consultation fatigue”. We support the recommendation that the CNSC EA staff/project officers attend (more) major public consultation events, to address licensing-related issues for example. This would remove the necessity for the proponent to speak on behalf of the CNSC.”	CNSC staff does not believe that the proposed approach will result in an increase in public consultation. At present, there are four opportunities for public consultation in addition to any consultation activities that would be led by a proponent. The proposed approach would include two guaranteed opportunities for public participation during a screening that would be led by CNSC staff. This would be in addition to any public participation activities led by the proponent.
	Cameco	“While the recommendations of the draft CMD are a step in the right direction, Cameco considers that the processes developed by the CNSC in respect of screening report projects are too complex and expensive. They contribute to consultation fatigue for those parties who are inclined to take an approach to	CNSC staff is of the view that the proposed process will improve the effectiveness and efficiency of its application of CEAA. Other points raised here relate to how the CEAA is structured, which is outside the scope of this CMD.

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		dialogue, while providing multiple forums for the litigious. An example is the approach taken to scoping. .. Of critical importance is that CEAA does not require the RA to establish a scope of the project at any particular stage of the EA process. Nor does it require the RA to pronounce the scope of the factors to be considered in the EA at the outset of the process. Therefore, while the project proponent may choose to seek the security of an early determination of project scope or the scope of factors to be considered ... there is no legal imperative or requirement to do so. Parliament and the Governor in Council have determined as a matter of law and policy that not all projects relating to nuclear facilities will require an extensive EA in the form of a Comprehensive Study Report or Panel Review. For uranium mines, for example, projects related to an increase in production of less than 35% have been determined to be ones that require a screening report only. This is appropriate because these projects are typically ones that do not raise any particular complexity terms of the determination of a scope of project. In virtually all cases, it is a simple task for the proponent to describe with clarity the projects for which approval is being sought add there is no need to seek or receive a formal determination of project scope at and early stage in the EA”	
Recommendation 1	NRCan	“NRCan strongly supports Recommendation 1 which proposes to delegate EA activities and decisions to CNSC staff, except in exceptional circumstances based on pre-set criteria. This measure can be expected to significantly reduce the duplication of public consultation activities and delays arising from the Commission public hearing process. This recommendation also allows for stakeholders to petition for having EA decisions made by the Commission based on pre-set criteria. To focus petitions it will be important to be clear that this criteria is intended to apply to exceptional situations.” “The CMD would be made stronger if, in the context of Recommendation 1, it addressed the joint RA coordination issue, in particular when CNSC is not the lead RA or FEAC. Consideration of this issue highlights the appropriateness of delegating EA decisions to staff rather than having unilateral, quasijudicial EA hearings by the Commission.”	No action required.
			There will be opportunity to further clarify multiple RA issues in the revised CNSC Guidelines on CEAA.
	Sierra Club of Canada	“A common theme of the current draft recommendations is that the CNSC’s administration of its CEAA obligations would be improved by downloading more	CNSC staff does not concur with this view.

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		decision-making responsibilities from the Commission to CNSC staff. It is the position of the Sierra Club of Canada that there is a need for more transparency- not less – in the CNSC’s application of CEAA.” “...the Sierra Club of Canada must oppose the recommendation that Commission functions be delegated down to CNSC staff. CNSC staff already has far too few checks on their decisions and actions.” “In this regard, the Sierra Club of Canada must take issue with the recommendation that “Information requirements will be more commensurate with the size and complexity of the project being assessed.” As illustrated with the example of Point Lepreau, CNSC staff made the unilateral determination that retubing a Candu is the equivalent of ‘maintenance.’ Such semantics should not be used to limit public access to information.”	
	Citizens for Renewable Energy	“... we express our strong opposition to what we see as the watering down of the authority of the Commission Tribunal. Also we see public involvement even more limited with CNSC staff and the Designated Officer(DO) making the decisions on scoping and screening in Environmental Assessments. And then the DO being delegated the prerogative of referring the EA to the Commission for a public hearing or being the Responsible Authority(RA) him-or herself. The suggested appeal process by stakeholders will not address this authoritarian approach! Designated Officers are part of CNSC staff. It is questionable whether this person would be objective enough to make a fair decision.”	CNSC staff does not concur with this view.
	Bruce Power	“Page 12, bullet “The D.O. determines that a decision to refer the project for panel review may be warranted, or...” Bruce Power would welcome the opportunity to comment on the guidelines or criteria to be used by the D.O. to make this decision.”	CNSC staff will consult stakeholders before finalizing the revised CNSC Guidelines on CEAA.
	Bruce Power	“Page 12, “This new approach would include a process that would allow stakeholders to apply to the Commission, asking that the D.O.’s decision(s) be referred to the Commission for decision(s).” This creates large problems for proponents maintaining timelines and costs reasonable to conducting the EA. A very specific timeline should be set in such that intervenors could not at the last moment request an increase in the scope of the EA or the decision making process. This has occurred a number of times during Provincial EAs and has	CNSC staff will give consideration to this issue during the revision of the CNSC Guidelines on CEAA.

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		been identified to the Province of Ontario during an industry workshop with provincial officials.	
	Canadian Environmental Law Assoc.	“CELA opposes the recommendation that the functions currently carried out by the Commission be delegated to a Designated Officer (staff of the Commission). There is already inadequate exercise of the CEAA mandate by the CNSC and a need for more transparent and thorough CEAA decision making, not less.” “The staff recommendations acknowledge that there will be fewer hearings before the CNSC on CEAA matters – in fact that is one of the goals of the staff recommendations. However, the consequence will be less transparency as to submissions made by various parties and less transparency as to the basis for decisions made on CEAA issues by the CNSC. The proposal which would allow for “elevation” of the decision to the CNSC by staff or by application by a member of the public will be illusory. This process is theoretically available in Ontario in its provincial environmental assessment process, whereby applicants may seek a “bump-up” of a Class environmental assessment to an individual environmental assessment. In practice these requests are never granted but they divert a great deal of time, energy and resources of the public to make the case for these requests. These efforts of the public are far better directed at the actual decision maker which in this case should be the Commission. Staff recommendation number 1 will not lessen “consultation fatigue”. Rather it will add yet one more process for ENGO’s and the public to invest resources and deal with – that is to seek elevation of scoping and screening decisions to the Commission.”	CNSC staff is of the view that the proposed process will maintain or enhance the current level of transparency and thoroughness with respect to the CNSC application of CEAA. CNSC staff do not concur that there will be less transparency with the proposed approach. With respect to the process for applying to the Commission to have a D.O.s decision(s) referred to the Commission for final decision, the concerns raised will be taken into account when the process is developed and described in the CNSC Guidelines on CEAA.
	CNA	“The CNA supports this recommendation and believes that the process outlined in the CMD would improve the efficiency of the EA process without hindering public access to information and participation.” “The CNA understands the need for a process, which allows stakeholders (including proponents) to contact the Commission, but strongly encourages a well-defined process, which allows input without being used as a vehicle for obstruction and delay.”	No action requested. CNSC staff believes that the proposed approach would result in a well defined process with appropriate opportunities for public consultation.
	Bruce Power	“Page 12, Benefits c) “EA would be used more as a planning tool earlier in the project’s conceptual environmental design stages, which is in support of the main	CNSC staff is committed to ensuring that an EA has been completed before any irrevocable decision can be made on a project.

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		objectives of EA". Page 21, Timing of Screenings relevant to Licensing, "EA must be done in the planning stages of the project before any irrevocable decision on the project is taken place". "Must" should be changed to "should". For both these comments an EA can and should be used as a planning tool but it could also parallel activities in which the company would be willing to take the risk that the EA is not accepted. In previous instances, CNSC staff has stated that work on a project cannot continue without the completion of the EA. This is not true under CEAA, as per section 5.(1), and EA is required before the federal authority issues a permit or license or grants an approval. According to the wording of the Act, work on the project could continue until such time as a licence amendment is required."	
	Canadian Environmental Assessment Agency	"The criteria for determining that screening EA matters should go before the Commission for decision (page 12). – It is not clear what criteria would be used. Are they those contained in Appendix A of a separate document, the CNSC Guidelines for EA (Revision 2 – December 2004)?"	Agree, changes made to clarify this (criteria would be published in the revised CNSC Guidelines on CEAA.
Recommendation 2	NRCan	"Although NRCan fully supports having CNSC staff take responsibility for EA decisions. In Recommendation 2, for small projects with no environmental issues, consider integrating some flexibility to allow the DG to delegate EA decisions to licencing or designated officers, as appropriate."	CNSC staff does not concur with suggestion.
	AECL	"Delegation of EA Decision-making Authority to CNSC staff: We support the CMD recommendation that EA decisions for screening-level Eas be made at the CSNSC staff level. The CMD (Recommendation 2) recommends that EA decisions be made at the director general level. We suggest that for low-risk projects the CNSC consider allowing EA decisions at a lower level within the organization to further improve efficiency and timeliness of the EA process."	CNSC staff does not concur with suggestion.
	CNA	"The CNA supports this recommendation although some consideration should be given to allowing EA decisions at a lower level for low-risk projects."	CNSC staff does not concur with this view.
Recommendation 3	NRCan	"NRCan strongly supports Recommendation 3 which proposes having CNSC provide EA guidance, using specific guidance and EA guideline templates, that	Agree, changes made as suggested.

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		tailors EA to the level of complexity of projects and the potential for adverse environmental effects. We suggest deleting the references to "high risk projects" and replacing with reference to "projects with a low or high potential for environmental effects"	
	CNA	"The CNA generally supports this recommendation. We are particularly positive about the development of templates and/or other forms of guidance that would simplify and expedite straightforward assessments."	CNSC staff will consider the inclusion of timelines during the revision of the CNSC Guidelines on CEAA.
		"The CNA would also like to see the inclusion of specific timelines in the guidance documents that would assist with the planning and timely completion of EA's. Perhaps implementing non-binding timelines as a trial would help determine if this would result in significant improvements."	
		"The CNA would also like to see consideration given to developing a method of ensuring that multiple, repetitive EA's over the life of a project, be considered during an initial EA associated with obtaining the initial project approval."	This issue will be considered during the revision of the CNSC Guidelines on CEAA.
	Bruce Power	"Page 13, recommendation 3, bullet b): Bruce Power fully agrees with what is being proposed. This will be an improvement, but clear criteria for potentially "high" and "low" (and even "medium") risk projects needs to be established. This also impacts recommendation 6, bullet b). It is critical that projects, which have minimal interaction with or impact on the environment, be identified very early on in the process."	CNSC staff will consider this comment in the revision of the CNSC Guidelines on CEAA.
	Canadian Environmental Assessment Agency	"In mentioning guidance to proponents (recommendation 3 on page 13), the role of the Commission as the federal EA coordinator could also be noted."	Agree, see new item c) under Recommendation 3.
Recommendation 4	NRCAN	"Recommendation 4 goes beyond the requirements of the <i>CEAA</i> for screening-level EAs by proposing mandatory public consultation on EA guidelines and screening reports. It is an inflexible one-size-fits-all approach that does not allow for the CNSC to exercise discretion after considering whether environmental issues or public concerns with respect to a project warrant public consultation. We understand the need to ensure that changes to the CNSC EA process are not so far reaching as to jeopardize the acceptance of the CMD recommendations. That said, we continue to recommend revising the CMD to clarify that if there are	CNSC staff does not concur with this suggestion.

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		any reasons to believe there is public interest in the EA of a project, the public would be given an opportunity to comment on the EA guidelines and screening report. This keeps the option open of exercising RA discretion on whether to consult the public during EA screenings.”	
	OPG	“Respecting recommendation 4, we suggest that the requirement for the public to be given an opportunity to comment on the draft project guidelines should be discretionary. We see the value of public involvement in commenting on the scope of some environmental assessments, however others, particularly facility expansions, do not need this level of involvement. This is particularly the case where the facility has been previously considered in an environmental assessment.”	CNSC staff does not concur with this suggestion.
	Citizens for Renewable Energy	“In regard to public commenting and public hearings: We need at least a 60-day commenting period on every project application and, as recommended in this draft, the Commission should make every effort to hold hearings in the host community of a project.”	Consideration will be given to this comment during the revision of the CNSC Guidelines on CEAA.
	Bruce Power	“Page 14, recommendation 4: The impact of this recommendation is not totally clear, taking Table 1 (page 6) and recommendation 5 into consideration. The proponent performs many public participation activities in the EA process. It is not clear if these new recommendations will result in additional independent public consultation by the CNSC, or if the recommendations would be implemented in concert with activities done by the proponent, thus truly reducing risk of duplication of effort and consultation fatigue. In short, consultation fatigue results from gross duplication of effort. All public consultation associated with an EA must be integrated between the CNSC and the proponent, i.e. if the CNSC is to do an independent consultation on say the project EA guidelines, then it should be mandated up front that the proponent shall not duplicate the same effort.”	The proposed approach would include two guaranteed opportunities for public participation during a screening that would be led by CNSC staff. The CMD clearly indicates that these two CNSC-led opportunities will be at the draft project-specific EA guidelines stage, and at the screening report stage. This clarity should help to eliminate duplication of effort between the CNSC and the proponent.
	Canadian Environmental Law Assoc.	“... the suggestion for mandatory public consultation/ outreach in the project area is a good idea which CELA supports, but it should be by the CNSC, not by the proponent. For example, at the National Energy Board, the CEAA public consultation is carried out by the NEB; NOT by the project proponent. All submissions by the public are made to the Board – which makes them available to the public. This avoids the risk or perception that people’s comments and	The proposed approach would include two guaranteed opportunities for public participation during a screening that would be led by CNSC staff. This would be in addition to any public participation activities led by the proponent. One of the two mandatory public consultation opportunities will occur in the project area where CNSC staff has determined that public interest would warrant an interactive consultation

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		submissions are “filtered” by the proponent and ensures that comments and submission by the public reach the decision maker.”	process.
		“CELA supports the suggestion of adding other communities in addition to Ottawa as locales for public hearings... The CNSC should hold hearings on CEAA matters pertaining to its mandate in communities across the country allowing participation by residents and the public located in proximity to the project.”	This comment is outside of the scope of the CMD.
		“CELA supports the suggestion contained in recommendation 4 that the public be able to comment on draft project specific EA guideline documents. This approach has precedent in the procedures followed by the Department of Fisheries and Oceans in certain projects and in the National Energy Board processes., CELA has found that this opportunity is very helpful for the public to ensure that their concerns and potential issues are included in the scope of the specific Environmental Assessment.”	No action requested.
	CNA	“The CNA agrees that an open and transparent public consultation process is an important prerequisite to an effective and efficient EA process.”	No action requested.
		“The CAN also feels that earlier consultation could result in more meaningful input.”	No action requested.
		“We would like to suggest (a) be reworded so that the consultation process for EA’s that are deemed simple and straight forward be consistent with formal CEAA requirements.”	CNSC staff does not concur with this suggestion.
	Canadian Environmental Assessment Agency	“In discussing public participation (pages 14 and 22), it is suggested that there be mandatory opportunities for public participation, at the stage of Draft EA Guidelines and Draft Screening Report. By referring to a document as a Draft Screening Report, there may be some uncertainty as to whether there would also be an opportunity for the public to comment on a final screening report. It would perhaps be better to simply call it a screening report, thereby, making it clear that public comments would be taken into account before a course of action was decided upon.”	Agree, changes made as suggested.
Recommendation 5	CNA	“The CNA agrees with this recommendation and sees it as complementary to Recommendation 4.”	No action requested.
Recommendation 6	Canadian Environmental	“The draft recommendations suggest “face to face” meetings between the regulator, the proponent and other federal departments. This excludes the public	Agree, change made to d) of recommendation 6.

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	Law Assoc.	and is not an acceptably transparent process. The lack of transparency would be obviated by a public consultation process led by the CNSC instead of the regulator. This would also assist in avoiding perception of or actual risk of “regulatory capture” in which the regulator is too closely associated with the regulated industry.”	
	CNA	“The CNA agrees that these proposals would improve the CNSC’s EA process but would again like to see the inclusion of specific timelines particularly pertaining to “determinations”. This would help address the specific concerns of delays in determining if an EA is require.”	CNSC staff will consider the inclusion of timelines during the revision of the CNSC Guidelines on CEAA.
		“In our experience, many delays in the EA process are the result of unacceptably long time frames for departmental reviews of technical EA study reports. Industry strongly supports the use of multi-party meetings including the proponent to address key issues.”	No action requested.
Related Considerations	OPG	“... OPG also suggests that CNSC staff identify in the section on related considerations, the potential to develop class screening reports. As noted in the draft CMD, the CNSC has performed EA’s on a number of projects. To avoid repetition of effort, these screenings should now be considered for their use as model screenings or as replacement screening reports. The use of class screening recognizes that similar projects are not likely to cause a significant environmental effect, particularly when actual operating performance information confirms the EA findings.”	CNSC staff has explored with the CEA Agency the potential utility of class screenings for projects assessed by the CNSC. It has been determined that proceeding with class screenings at this time would not be beneficial.
Related Considerations/ Panel Reviews	OPG	“Respecting panel reviews, we suggest that CNSC staff note the potential for the panel review and licensing process to occur simultaneously and that the EA panel members could be appointed as temporary members of the Commission pursuant to the Act.”	This issue would be further explored in any discussions with the CEA Agency relating to a possible Memorandum of Understanding on how the Commission would be involved in a cooperative environmental assessment panel review.
	Bruce Power	“Page 17, “CNSC staff suggest that discussions commence in 2005 with the CEA Agency with a view to developing a generic Memorandum of Understanding on how the Commission would be involved in a cooperative environmental assessment panel review should such a review be warranted.” If this is to take place, Bruce Power believes that the panel should consist of only Federal Authorities that have a direct association with the project.	CNSC staff does not concur with this view. Environmental assessment panel members are appointed by the Minister of the Environment in consultation with the Responsible Authority Minister and are generally persons from outside the federal government to ensure independence.
	Citizens for Renewable	“The suggestion that the Commission hearings process is well suited to be the prominent mechanism for conducting an EA panel review (Related	CNSC staff does not concur with this view.

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	Energy	Considerations) is just proof how hard CNSC staff is trying to shut out independent experts! How can there be independent panel hearings into highly controversial projects when the Commission and staff themselves would not be subject to scrutiny?"	
Appendix A	John Morand (Port Hope Municipal Council)	"... I am recommending that Appendix "A" be amended to provide input from the impacted community on whether the DO or bump up process is utilized. Where a community requests a bump-up it should be automatic and not require intervention of the minister or the commission – in other words a given based on the concerns of the host community."	With respect to the process for applying to the Commission to have a D.O.s decision(s) referred to the Commission for final decision, the concerns raised will be taken into account when the process is developed and described in the CNSC Guidelines on CEAA.
	Bruce Power	"Page 18, Mediation, "The responsible authority must take the mediator's report into consideration before determining the significance of the environmental effects of the project." Bruce Power believes that careful consideration of specific review and comment periods should be set for this item, as it could create undue costs due to EA extension for the proponent.	In the event that a project is referred to mediation under CEAA, the Minister of the Environment determines the terms of reference of the mediation in consultation with the Responsible Authority Minister.
Appendix B	NRCan	"Appendix B states that the CNSC EA and licencing processes are consecutive processes, unlike the NEB process which has parallel regulatory processes. The CNSC needs to further clarify if it is proposing that, unlike current practice, no licencing process-related work by staff will proceed while an EA is in progress. NRCan strongly supports ensuring that parallel or concurrent EA and licencing-related work by staff continues to be conducted, and this needs to clearly stated to avoid misunderstandings."	CNSC staff do not concur with this suggestion as it runs counter to using CEAA as a planning tool.
		"It would be helpful in Appendix B to include an indication of the time implications of CNSC's EA process, and in particular for decision making by Commission at hearings, (a 1-day hearing is a 4-5 month process) and contrast this with the NEB process."	This research will be undertaken but will not be completed in time for inclusion into Appendix B.
	National Energy Board	Under the "National Energy Board Process" column with respect to "Delegation": Delete text and replace with "NEB staff prepare screening report based on information provided by applicant (e.g. EA studies), subsequent information requests, and comments from other interested parties (including Federal Authorities)."	Agree, change made as suggested.
		Under "National Energy Board Process" column with respect to "Decision on EA Guidelines": Delete "Staff" and replace with "Board".	Agree, change made as suggested.
		Under "National Energy Board Process" column with respect to "Hearings":	Agree, change made as suggested.

Section	Reviewer	Comment	Response
		Delete “No hearings” and replace with “Mandatory public hearing for projects involving > 40 km of new right-of-way (NEB Act requirement); smaller projects may go to hearing if warranted by public concern or other factors”	
		Under “National Energy Board Process” column with respect to “Public Consultation”: Delete “One mandatory opportunity for public consultation, on screening report”. Delete “NEB staff have” and replace with “NEB Board has”.	Agree, change made as suggested.
Appendix D	NRCan	“There are some inaccuracies in Appendix D with respect to EA start and end dates.”	Agree, changes made to Appendix D to correct errors.