Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

September 11, 2014

Canadian Nuclear Safety Commission
P.O. Box 1046, Station B
280 Slater Street
Ottawa, Ontario, Canada K1P 5S9

Via email: consulation@cnsc-cnsc.gc.ca

Re: Feedback comment for Draft REGDOC-2.9.1, *Environmental Protection: Environmental Assessments*

Thank you once again for the opportunity to provide submissions as well as feedback on the submitted comments regarding the matter noted above. The following constitute the feedback of the Canadian Environmental Law Association ("CELA").

Substantive Concerns

A number of submitted comments question the burden imposed by an environmental assessment ("EA") as part of the licencing process under the *Nuclear Safety and Control Act* ("NSCA") outlined in Part A of the draft REGDOC 2.9.1. Submissions have suggested that Part A is an attempt to reintroduce the EA process under the now repealed *Canadian Environmental Assessment Act, 1992* and creates an added and unauthorized burden. Submissions have also indicated that since the term "environmental assessment" is not defined by the NSCA, the Canadian Nuclear Safety Commission ("CNSC") lacks the jurisdiction to develop an EA as part of the licencing process.

Many of the concerns about Part A that indicate the CNSC lacks the jurisdiction to introduce an EA under the NSCA are likely attributable to the CNSC's use of the term "EA". Strictly speaking, what the CNSC is proposing under the NSCA is not an EA; it is a largely an impact mitigation exercise. An EA under CEAA 2012 is a much more comprehensive and broader environmental planning regime that goes beyond merely identifying and evaluating environmental impacts. CEAA 2012 EA's includes key considerations such as, *inter alia*, need for, alternatives to, alternative means, and sustainability considerations. This can be seen when comparing the various matters listed in section 19 of CEAA 2012, which are noticeably absent from section 24(4) of the NSCA. To avoid confusion between the proposed "EA" under the NSCA and an actual EA under CEAA 2012, CELA would recommend REGDOC 2.9.1 utilize different terminology in Part A to describe the proposed process. For example, describing the process as "Evaluating Environmental Impacts under NSCA" rather than an "EA under NSCA" would help alleviate much of the concerns of licence applicants.

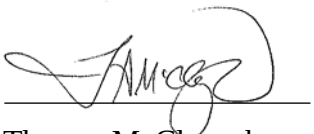
Regardless of their basis, the submissions concerned with the added burden placed on licence applicants because of the introduction of an "EA" under the NSCA largely indicate the possibility of delays and added cost to projects. In response, CELA would only reiterate the mandate of the CNSC mentioned in the Background section of Part A of the draft REGDOC 2.9.1 and stipulated under section 24(4) of the NSCA. That is, when determining whether to issue a licence under the NSCA, the CNSC is prohibited from "issuing, renewing, amending, transferring or replacing a licence unless, in the opinion of the CNSC, the applicant is qualified to carry out the activity that the licence will authorize; and will, in carrying out that activity, make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed." There is no qualification under the NSCA to provide allowance for the burden placed on an applicant for a licence in satisfying the CNSC of these conditions. There is no qualification in the NSCA because the interest in "the protection of the environment, the health and safety of persons…" outweighs the cost implication and delay to a prospective licence holder. While CELA is aware that the introduction of an EA under the NSCA will possibly increase certain costs and delay projects, the increased transparency and opportunity for public participation in the licencing process can only improve the CNSC's ability to meet its statutory mandate to protect the environment, and health and safety of Canadians. A concern that far outweighs the possibility of inconvenience to licence applicants. It also bears mentioning, the risks associated with the activities requiring a licence under the NSCA and the commensurate responsibility to Canadians should not be taken lightly by the CNSC.

Procedural Concern

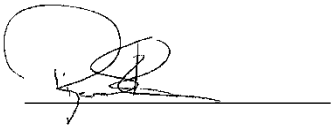
A number of submissions are directed at the procedural timeframes set out in both Parts A and B for the NSCA and CEAA 2012, respectively. The timeframes provide little detail on how applicants can or should fulfill the information requirements under these statutes. While it may well be that that CNSC plans to provide such details in future regulatory documents once this current proposal gets adopted, the lack in clarity will lead to uncertainty in the licencing process. CELA would recommend that Part B include, in the very least, a cross-reference to the factors listed under section 19 of CEAA 2012. Similarly, Part A should concisely describe the minimum content requirements to be addressed by licence applicant's supporting documentation so that the CNSC can more effectively fulfill the environmental component of its licencing mandate under section 24(4) of NSCA.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa McClenaghan
Executive Director



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