

# Record of Proceedings, Including Reasons for Decision

In the Matter of

Proponent COGEMA Resources Inc.

Subject Environmental Assessment Guidelines for the  
Operation of the McClean Lake Mine and  
Mill Facility

Date August 29, 2003



## 1. Introduction

COGEMA Resources Inc. (COGEMA) has applied to the Canadian Nuclear Safety Commission (the “Commission” when referring to the tribunal component, and “CNSC staff” when referring to the personnel of the CNSC) for a new operating licence for its McClean Lake mine and mill facility and, consequentially upon issuing the requested licence, COGEMA has requested that the Commission revoke the current operating licence for the facility, UMOL-MINEMILLMcCLEAN.09/2005. The application for a new licence does not propose any changes to the currently authorized operations. The McClean Lake mine and mill facility, located in the Athabasca region of northern Saskatchewan, has been in operation since June 1999.

The McClean Lake proposal, including construction, operation and decommissioning, was reviewed by a joint Federal-Provincial Environmental Assessment Panel under the federal *Environmental Assessment Review Process Guidelines Order* (EARPGO) in 1993 and 1997. The Panel recommendation, which was accepted by the federal and Saskatchewan governments, was that the McClean Lake project proceeds subject to conditions. All of the conditions were met at various stages of licensing by the CNSC and former Atomic Energy Control Board. However, the Federal Court decision of 2002 in the McClean Lake case<sup>1</sup> has produced uncertainty regarding the transitional provisions of the CEAA for projects previously assessed under the EARPGO. CNSC staff therefore, using an abundance of caution, and at the request of COGEMA, agreed that a new environmental assessment of the facility under the CEAA will be carried out.

In accordance with the *Canadian Environmental Assessment Act* (CEAA), the CNSC staff will prepare, and the Commission will make a decision on an environmental assessment (EA) of the proposed project before the Commission makes a decision on the licence application. For this environmental assessment under the CEAA, the Commission is the sole responsible authority.

In carrying out the assessment under the CEAA, the Commission must first determine the *scope of the project* and the *scope of the assessment*.

To assist the Commission in this regard, CNSC staff, after consulting with other government departments, the public, and other stakeholders, prepared a draft *Environmental Assessment Guidelines* document (EA Guidelines), including draft statements of scope for the approval of the Commission. The EA Guidelines also contain recommendations and instructions for the structure and methods to be used in completing the environmental assessment, including for the conduct of further public and stakeholder consultations. The EA Guidelines are attached as Appendix A to CMD 03-H26.

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<sup>1</sup> See *Interchurch Uranium Committee Educational Co-operative v. Atomic Energy Control Board and COGEMA Resources Inc.*, FCTD, T-1313-99, September 23, 2002. The decision is under appeal to the Federal Court of Appeal.

Issues:

In considering the EA Guidelines, the Canadian Nuclear Safety Commission was required to decide, pursuant to subsections 15(1) and 16(3) of the CEAA:

- a) the *scope of the project* for which the environmental assessment is to be conducted; and
- b) the *scope of the factors* to be taken into consideration in the conduct of the environmental assessment.

The Commission also considered whether, at this time, it would request the federal Minister of the Environment, pursuant to section 25 of the CEAA, to refer the project to a mediator or a review panel.

Public Hearing:

The Commission, in making its decision, considered information presented for a one-day public hearing held on July 16, 2003 in Ottawa, Ontario. The public hearing was conducted in accordance with the *Canadian Nuclear Safety Commission Rules of Procedure*. During the public hearing, the Commission received written submissions and heard oral presentations from COGEMA (CMD 03-H26.1 and CMD 03-H26.1A), CNSC staff (CMD 03-H26) and an intervenor, the Canadian Uranium Alliance (CMD 03-H26.2).

## 2. Decision

Based on its consideration of the matter, as described in more details in the following sections of this *Record of Proceedings*,

the Canadian Nuclear Safety Commission, pursuant to sections 15 and 16 of the CEAA, approves the *Environmental Assessment (EA) Guidelines (Scope of Project & Assessment): Environmental Assessment of the Operation of the McClean Lake Mine and Mill Facility*, as set out in Appendix A of CMD 03-H26 as modified by the Commission below.

The Commission also decides that, at this time, the project does not warrant a referral, pursuant to section 25 of the CEAA, to the federal Minister of Environment for his referral to a mediator or a review panel.

The Commission makes the following changes to the draft EA Guidelines:

In section 9.2.2 (Spatial and Temporal Boundaries of the Assessment), page 10, the sentence:

“Study areas will encompass all relevant components of the environment including people, land, water, air and all other human and environmental aspects” is replaced with;

“Study areas will encompass all relevant components of the environment including people, non-human biota, land, water, air and all other human and environmental aspects”.

The Commission adds the following sentence in section 9.2.3 (Description of the Existing Environment), page 11, after the second sentence of the 5<sup>th</sup> paragraph:

“VECs should be identified following consultations with the public, First Nations, departments of the federal and provincial governments, and other relevant stakeholders.”

In section 11.0 (Conclusion and Recommendations for decision), page 17, the sentence:

“The Commission will make its decision on the Screening Report; then, it can proceed with licensing hearings to make its decisions on COGEMA’s application for a licence to construct, and a subsequent licence to operate.” is replaced with:

“The Commission will make its decision on the Screening Report. If the Commission concludes that the project is not likely to cause significant environmental effects, taking into account the appropriate mitigation measures, it may proceed with licensing hearings and decisions on COGEMA’s application”.

### **3. Issues and Commission Findings**

#### **3.1 Application of the CEAA**

CNSC staff noted that in August 2001, in its reasons for decision on the renewal of the operating licence for the McClean Lake Operation (UMOL-MINEMILL-McClean 09/2005), the Commission accepted the CNSC staff’s conclusion set out in CMD 01-H18, that except for the then proposed increase in the production limit at the JEB Mill (that was assessed under the CEAA and determined to not likely cause significant adverse environmental effects), all of the proposed operations in respect of which the licence was sought fell within the category of projects described in section 2, Schedule I of the CEAA *Exclusion List Regulations*. In such case, and in accordance with paragraph 7(1)(a) of the CEAA, an environmental assessment of the project would not be required.

However, as noted in section 1 above, CNSC staff, due to the uncertainty created by the Federal Court decision and at COGEMA’s request, has agreed to use an abundance of caution and conduct an environmental assessment of the project under the CEAA. CNSC staff noted that if the appeal is successful and the original decision of the Federal Court is struck down, the CNSC could proceed with licensing decisions for the facility, taking into account the earlier EARPGO review panel and subject to the findings of the Federal Court of Appeal.

The Commission considered this information and concurs with the decision to proceed with an environmental assessment of the project under the CEAA.

### 3.2 Type of Environmental Assessment

CNSC staff explained that because the project is not of a type described in the CEAA *Comprehensive Study List Regulations*, a “screening” environmental assessment will be conducted, and a *Screening Report* will be prepared in accordance with subsection 18(1) of the CEAA. CNSC staff explained that it would prepare the Screening Report using the results of the environmental assessment studies delegated to the proponent pursuant to subsection 17(1) of the CEAA. CNSC staff will require that COGEMA carry out the studies in accordance with the approved EA Guidelines.

#### 3.2.1 Screening vs. Comprehensive

An intervenor, the Canadian Uranium Alliance, was of the view that the project should be subjected to a Comprehensive Study rather than a Screening.

In response to a question from the Commission on why a Comprehensive Study is not required in this case, staff explained that only those projects listed in the *Comprehensive Study List Regulations* may undergo a Comprehensive Study. CNSC staff noted that, in this case, the project is the “operation” of an existing uranium mine facility and therefore, in accordance with the *Comprehensive Study List Regulations*, a Comprehensive Study may not be undertaken. CNSC staff further explained that the *Comprehensive Study List Regulations* address proposed construction, decommissioning, abandonment and expansion of uranium facilities but not their operation.

#### 3.2.2. Review Panel or Mediator

CNSC staff is of the view that, at this time, there are no grounds under CEAA for the Commission to refer the project to the Minister of the Environment for a referral to a review panel or mediator.

CNSC staff further noted that if, during the assessment, there is considerable uncertainty about, or evidence of significant environmental effects, or if significant public concerns arise, CNSC staff will inform the Commission and recommend that the Commission request the Minister of the Environment refer the project to a review panel or mediator as appropriate.

#### 3.2.3 Conclusion of the Type of Environmental Assessment Required

Based on this information, the Commission decides that, at this time, it will not refer the project to the Minister of the Environment for referral to a panel review or mediator. The Commission may consider the need for such a referral to a panel at any time during the assessment and therefore requests that staff inform the Commission of any significant issues arising during the conduct of the environmental assessment which may justify such a referral. In that regard, CNSC staff may inform and make recommendations to the Commission by way of a Significant Development Report at any regularly scheduled Commission meeting, or directly through the Secretary of the Commission.

The Commission further decides that the conduct of a screening report, as opposed to a comprehensive study, is appropriate in the circumstances, as the project consisting of the operation of a mine and mill facility is not of the types described in the *Comprehensive Study List Regulations*.

### **3.3 Pre-Hearing Consultations on the Draft EA Guidelines**

This section addresses the consultations that CNSC staff conducted on the proposed draft EA Guidelines. The Commission considered the adequacy of these consultations as part of its consideration of the appropriateness of the proposed EA Guidelines, and whether the public and other stakeholders have an adequate opportunity to become informed about the assessment at this point in the process.

#### **3.3.1 Federal Government**

CNSC staff explained that, in accordance with the CEAA *Federal Coordination Regulations*, CNSC staff has consulted on the draft EA Guidelines, and will continue to consult during the environmental assessment with the following federal departments: Health Canada; Environment Canada; Indian and Northern Affairs; Fisheries and Oceans Canada; and Natural Resources Canada.

#### **3.3.2 Provincial Government**

CNSC stated that it has confirmed with Saskatchewan Environment, Approvals Branch, that the requirements of the Saskatchewan *Environmental Assessment Act* do not apply to the proposal. Nevertheless, CNSC staff will continue to consult with Saskatchewan Environment throughout the EA and welcome their involvement in the technical review.

#### **3.3.3 Public**

To provide for public input to the draft EA Guidelines, CNSC staff reported that it established a “public registry” for the assessment in accordance with the requirements of the CEAA. The registry provides information on the project and access to all related documents.

The disposition of comments received from the public and government is included in CNSC staff report CMD 03-H26, Appendix B. CNSC staff also appended to its report (Appendix D of CMD 03-H26) information on the broader public consultation program currently being conducted by COGEMA. That program covers the EA and project operation.

#### **3.3.4 Conclusions on the Adequacy of Consultations on the Draft EA Guidelines**

Based on this information, and taking into account the further opportunity for public comment provided by this public hearing on the matter, the Commission is satisfied that the public and other stakeholders have had sufficient opportunity to become informed about, and provide input on the draft EA Guidelines. The Commission is also satisfied that the public concerns expressed

to date from this process do not warrant a referral of the project to the Minister of the Environment for his referral to a review panel or mediator.

The Commission notes that the public will continue to be consulted during the conduct of the environmental assessment studies (refer to section 3.5.4 below), and will have another opportunity to provide comments on the results of the screening environmental assessment when the matter comes before the Commission for a decision at a future public hearing.

### **3.4 The Scope of the Project**

#### **3.4.1 General**

“Scope” under the CEAA is expressed in two parts: the *scope of the project* (i.e., the physical works and activities proposed) and the *scope of assessment* (i.e., the scope of the factors to be considered in assessing the effects of the project). This section addresses only the issues relating to the *scope of the project*. The issues related to the *scope of assessment* are considered in section 3.5 of this *Record of Proceedings*.

CNSC staff explained how the CEAA requires the responsible authority, pursuant to section 15 of the CEAA, to systematically identify the *scope of the project*. This involves the identification of the *principal project* and the other physical activities directly related to the principal project.

In summary, CNSC staff recommended that the Commission identify the project as including: operating a uranium mine and mill facility consisting of a mine, mill, waste management systems and associated site facilities; mining the Sue C ore body; mining the Sue A and Sue B ore bodies (subject to the prior submission of a Preliminary Decommissioning Plan and associated financial guarantee); producing a concentrate; possessing, storing, using, transferring, importing and disposing of nuclear substances and radiation devices that are required for, or associated with laboratory studies, fixed gauge usage and bore hole logging activities; packaging and transporting nuclear substances; and modifying the facilities, subject to prior written approval of the Commission or a person authorized by the Commission.

CNSC staff further noted that the “mine Sue C ore body” part of the project involves mining of ore and complementary and supporting activities, including: ore storage and handling, waste rock management, water collection and treatment, and environment monitoring.

In addition, CNSC staff noted that the project does not include the milling of ore or the management of the tailings or waste rock from ore deposits other than those that have been mined, or have the regulatory approval to be mined, at the McClean Lake Mine and Mill Facility. The project does not involve any changes to the reference facilities, or to their management described in the existing approved licensing documents. Decommissioning of the facility, while not included in the scope of the current project, is included in the scope of the assessment based on the Preliminary Decommissioning Plans.

#### **3.4.2 Sue C Mining**

In response to a question from the Commission on Sue C mining, CNSC staff noted that although the physical mining activities have been completed, “mine Sue C ore body” was included in the scope of the project because of the ongoing related activities for waste rock management, mine water handling and treatment, ore stockpiling, and ore haulage to the mill. In a follow-up question, the Commission sought further clarifications on what activities within the Sue C pit were included in the scope of the project. COGEMA replied that the planned disposal of waste rock from the mining of the Sue C, Sue A, Sue B and JEB pits is included in the project scope. Any additional plans, such as for the disposal of Cigar Lake mine waste rock in the Sue C pit, will be addressed in the cumulative effects part of the assessment (see section 3.5.3 below).

### 3.4.3 Sue A and Sue B Excavation

In response to a question from the Commission on the status of Sue A and Sue B pits, COGEMA confirmed that the Sue A and Sue B pits have not yet been developed, but that the planned excavation activities are part of the project scope. In response to a follow-up question on the mining of the Sue A and B pits, COGEMA added that the area where it has previously stockpiled special waste will become part of the new pits, and that the sedimentation ponds may need to be relocated as well. COGEMA added that the water treatment plant and the ore storage pad will not be affected by the development of Sue A and Sue B.

### 3.4.4 Conclusion on the Scope of the Project

Based on the information provided and above clarifications, the Commission accepts the CNSC staff recommendation concerning the definition of the *scope of the project* and approves the definition of the project scope as set out in section 7.0 of the draft EA Guidelines.

## 3.5 Scope of the Assessment

### 3.5.1 General

The second part of “scope” under the CEAA (the *scope of project* being the first part) is the *scope of the assessment* – otherwise described in the CEAA as the scope of the factors that will be considered in assessing the environmental effects of the project.

CNSC staff explained that the scope of a screening assessment under the CEAA must be determined by the Commission pursuant to subsection 16(3) of the CEAA, and include the factors set out in paragraphs 16(1)(a) to (d) of the CEAA. Other factors may be included at the discretion of the Commission under paragraph 16(1)(e) of the CEAA.

CNSC staff stated that the mandatory factors in subsection 16(1) of the CEAA are: the environmental effects of the project, including those that may be caused by malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities; the significance of the effects identified above; comments from the public that are received in accordance with the CEAA and its regulations; and measures that are technically and

economically feasible that would mitigate any significant adverse environmental effects of the project.

In addition to these factors, CNSC staff recommended that the Commission include, pursuant to paragraph 16(1)(e), the following factors: the purpose of the project; the need for, and requirements of a follow-up program in respect of the project; and the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future.

### 3.5.2 Air Emissions

In response to a question from the Commission on the control of air emissions, particularly sulphur dioxide and greenhouse gases, CNSC staff stated that the proposed scope of the assessment is such that these, and all other potential effects on the atmospheric environment, will be identified and assessed. COGEMA further acknowledged that it has a corporate responsibility to comply with the applicable environmental regulations in this regard and to conduct its operations in a manner that is consistent with Canadian policies and commitments, such as in relation to the Kyoto Protocol on climate change. COGEMA noted that such commitments are articulated in its Environmental Management System that is certified under the ISO 14001 standard.

### 3.5.3 Scope of the Cumulative Effects Assessment

With respect to the projects that may be included in the scope of the cumulative effects assessment, the Commission sought further information on the forecasted increase in mill production. In response, COGEMA explained that the scope of the project includes the currently approved production of 8 million pounds of  $U_3O_8$  from McClean Lake sources. COGEMA also stated that the JEB mill at the McClean Lake site was previously assessed to 24 million pounds of  $U_3O_8$  production yearly based on the possibility of milling ore from other mine sites, such as the Cigar Lake mine. CNSC staff added that the construction and operation of the Cigar Lake mine has not yet been approved. Similarly, no approvals have been granted for the transfer of Cigar Lake ore or waste rock to the McClean Lake site.

Based on this information, the Commission accepts that neither the planned increase in mill production (and associated increase in tailings management) above the currently approved 8 million pounds per year rate, nor the disposal of waste rock from the Cigar Lake mine is part of the project for the purpose of the current environmental assessment. The Commission notes, however, that the effects of those planned future projects and activities at the McClean Lake mine and mill site, and in particular the related potential effects on groundwater quality in the vicinity of the Sue C pit, will be evaluated in the current Screening EA in the context of cumulative effects.

Further with respect to the scope of the cumulative effects assessment, the Commission questioned whether the broader regional effects of uranium mining in northern Saskatchewan will be captured in the cumulative effects assessment. CNSC staff and COGEMA confirmed that environmental monitoring programs are in place to address these broad cumulative effects

and that this information will be used in the cumulative effects assessment for the McClean Lake project where appropriate.

### 3.5.4 Scope of Stakeholders Consultation

In response to a question from the Commission on the planned consultation with stakeholders during the conduct of the EA, COGEMA confirmed that its workers are included in their consultation program. The Commission, however, notes that COGEMA's consultation program documentation (summarized as Appendix D to CMD 03-H26) has yet to be updated to reflect this. The Commission strongly recommends that COGEMA modify its documentation accordingly.

### 3.5.5 Conclusions on the Scope of the Assessment

Based on the information provided, the Commission concludes that the scope of the assessment, as described in section 8.0 of the draft EA Guidelines, is appropriate for the purpose of the environmental assessment of the proposed operation of the McClean Lake mine and mill facility.

## **3.6 Environmental Assessment Structure and Method**

### 3.6.1 General

The draft EA Guidelines, in addition to containing statements describing the scope of the project and scope of the assessment (as addressed in the foregoing sections 3.4 and 3.5 of this *Records of Proceedings*), contain instructions relating to the structured approach and method to be used in conducting the environmental assessment. Therefore, in its consideration of the acceptability of the draft EA Guidelines document, the Commission also considered and made decisions on the recommended structure and methods for the assessment described therein.

Referring to the draft EA Guidelines, CNSC staff outlined the proposed structure and methods for completing the environmental assessment studies and screening report. This includes instructions for describing: the project (construction, normal operations, accidents and malfunctions, and decommissioning); the spatial and temporal boundaries of the assessment; the existing environment; the assessment of the mitigation of environmental effects; the assessment of cumulative effects; the significance of residual effects (post mitigation); the conduct of stakeholder consultations throughout the assessment; and the design and implementation of a follow-up program.

### 3.6.2 Use of Information from Previous Environmental Assessments

Noting that time has passed since the project was originally assessed pursuant to the EARPGO, the Commission questioned how the information from that earlier assessment would be used in the screening report. In response, COGEMA stated that it will make use of all available and relevant information in carrying out the studies delegated to it. COGEMA acknowledged that

some of that information will require consolidation, updating and verification and that COGEMA has committed considerable resources to do this.

### 3.6.3 Consultation Methods

Internet:

The Commission questioned whether the Internet was an appropriate means of carrying out the public consultation in this case (i.e., taking into account the relatively remote setting and potential difficulties that the public may have with gaining access to the Internet). In response, CNSC staff stated that, in addition to the Internet, community meetings are also an important intrinsic part of the planned outreach program to the community. COGEMA added that public access to the Internet and computer equipment (e.g., CD ROM) is available at key public facilities and First Nation band offices.

Provincial Consultation:

In response to a question from the Commission on consultation with the Province of Saskatchewan, CNSC staff confirmed that Saskatchewan Environment will be involved in the environmental assessment, mainly as a technical reviewer.

### 3.6.4 Conclusion on the Structure and Methods for the Environmental Assessment

Based on the information presented and the above-noted considerations, the Commission is satisfied that the general structure, methods, and other instructions for conducting the environmental assessment, as described in the draft EA Guidelines attached to CMD 03-H26, are adequate. The Commission requests that CNSC staff closely monitor the conduct of the studies to ensure that the studies are being carried out in accordance with the EA Guidelines.

## 4. Conclusion

The Commission has considered the information and submissions of the project proponent and CNSC staff, as presented in the material available for reference on the record, as well as the written submission of an intervenor provided at the hearing.

The Commission, in making its decision pursuant to sections 15 and 16 of the CEAA, approves the *Environmental Assessment (EA) Guidelines (Scope of Project & Assessment): Environmental Assessment of the Operation of the McClean Lake Mine and Mill Facility*, as presented as Appendix A to CMD 03-H26, modified by the Commission as follows:

The Commission makes the following changes to the draft EA Guidelines:

In section 9.2.2 (Spatial and Temporal Boundaries of the Assessment), page 10, the sentence:

“Study areas will encompass all relevant components of the environment including people, land, water, air and all other human and environmental aspects” is replaced with;

“Study areas will encompass all relevant components of the environment including people, non-human biota, land, water, air and all other human and environmental aspects”.

The Commission adds the following sentence in section 9.2.3 (Description of the Existing Environment), page 11, after the second sentence of the 5<sup>th</sup> paragraph:

“VECs should be identified following consultations with the public, First Nations, departments of federal and provincial governments, and other relevant stakeholders.”

In section 11.0 (Conclusion and Recommendations for decision), page 17, the sentence:

“The Commission will make its decision on the Screening Report; then, it can proceed with licensing hearings to make its decisions on COGEMA’s application for a licence to construct, and a subsequent licence to operate.” is replaced with:

“The Commission will make its decision on the Screening Report. If the Commission concludes that the project is not likely to cause significant environmental effects, taking into account the appropriate mitigation measures, it may proceed with licensing hearings and decisions on COGEMA’s application”.

The Commission also concludes that, at this time, it will not request the federal Minister of the Environment to refer the project to a mediator or review panel in accordance with the provisions of the CEEA.

The Commission requests CNSC staff to closely monitor the conduct of the technical assessment studies and stakeholder consultations activities and report to the Commission on any issues that could justify the Commission giving further consideration to a referral of the project to the Minister of the Environment, or amending the scope of the project or assessment.

Marc A. Leblanc  
Secretary,  
Canadian Nuclear Safety Commission

Date of decision: July 16, 2003

Date of release of Reasons for Decision: August 29, 2003