

February 16, 2015

Brian Torrie
Director General
Regulation Policy Directorate
Canadian Nuclear Safety Commission
280 Slater Street
Ottawa, ON
K1P 5S9

Canadian Nuclear Association Comments on RegDoc-3.2.2, Aboriginal Engagement

The purpose of this letter is to provide comments to CNSC staff on proposed RegDoc-3.2.2, Aboriginal Engagement. The CNA has reviewed the document, and consulted its members, and has several comments that it wishes to submit for your consideration.

The Crown's Duty to Consult

Our members have significant issue with this Regulatory Document as it is currently written. The document makes repeated reference to the CNSC delegating its duty to consult to the licensee. This comment speaks to an underlying assumption within the document and necessitates that the draft Regulatory Document be withdrawn and reworked.

The preface to the document states that "REGDOC-3.2.2 is intended to form part of the licensing basis for a regulated facility or activity within the scope of the document." The CNA is unsure how a duty of the Crown can become part of the licensing basis for an individual licensee. The document needs to clearly identify that it is the CNSC, which is acting for the Crown, who has the duty to consult with Aboriginal groups.

This RegDoc should also provide guidance to Aboriginal groups on how they can participate in CNSC processes. Currently the document provides no guidance to Aboriginal groups to help them in their engagement with either the CNSC or the licensee.

Regulatory Requirements Versus Guidance

In the preface, the document states "Licensees are expected to review and consider guidance; should they choose not to follow it, they should explain how their chosen alternate approach meets regulatory requirements." If the guidance is in fact a 'regulatory requirement' such that the licensee needs to explain how it meets the guidance, then it is not guidance at all. This does not align with the explanation contained in the document of 'should'.





The document requires a clear understanding of the differences between 'engagement' versus 'consultation'. 'Engagement' deals with relationships and is best dealt with through internal company policy and programs. The document needs to provide a clear definition of each term and within the context of 'should' versus 'shall'. Failure to clearly delineate the requirements could lead to the expenditure of resources with no benefit; and delay projects through a requirement for consultation for projects that do not require it.

Submission of Aboriginal Engagement Plan and Report

The draft RegDoc states that an Aboriginal engagement plan shall be submitted as part of a project description if an Environmental Assessment decision is sought separately from a licensing decision. This requirement should be removed as the submission of an Aboriginal engagement plan, as part of a project description, is premature in the process. Submitting a plan at this stage is too early in the process and it would preclude any meaningful discussion with Aboriginal communities on an agreed upon consultation process. As well, a detailed consultation plan should not be submitted as part of the public record as is the project description.

The draft RegDoc states that the Aboriginal engagement plan should include a list of Aboriginal groups identified for engagement. This is not an appropriate condition to place on the licensee and is best undertaken by the Crown. Industry neither affirms nor denies the existence of Aboriginal or Treaty right; this is done by the Minister of Aboriginal Affairs on behalf of Canada.

We thank you for your consideration of this matter. If you or your staff requires further clarification on any of the above information, please do not hesitate to contact me at 613-237-4262.

Sincerely,

Dr. Peter Poruks

Manager of Regulatory Affairs Canadian Nuclear Association

Cc.

Dr. John Barrett, President, Canadian Nuclear Association

References

[1] Canadian Nuclear Safety Commission, Aboriginal Engagement, RegDoc-3.2.2, 2014, October.

^{&#}x27;Should' is used to express guidance or that which is advised.