



Historic Saugeen Métis
204 High Street
Southampton, Ontario
N0H 2L0
Direct Line (519) 483-4000
Fax (519) 483-4002

January 27, 2015

Our File: CNSC

Your File:

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

Dear Sir/Madam,

**Re: Historic Saugeen Metis
Comments on CNSC REGDOC-3.2.2
Public and Aboriginal Engagement – Aboriginal Engagement**

Historic Saugeen Metis (HSM) have reviewed the Draft Regulatory Document 3.2.2 - *Public and Aboriginal Engagement* dated October 2014 published by the Canadian Nuclear Safety Commission (CNSC).

We understand that the document is not a comprehensive guide on Aboriginal engagement, rather it provides procedural direction for licensees, in support of the broader approach to Aboriginal consultation implemented by the CNSC. In short, the document provides guidance and information on conducting Aboriginal engagement activities. It also provides more information about how CNSC staff evaluate specific problems or data during the review of licence applications.

We are pleased to provide the following comments with reference to specific sections of the document.

3.1 Overview of Aboriginal Engagement Planning and Reporting

- Licensees shall submit to CNSC an Aboriginal Engagement Plan and report, including a summary of any Aboriginal engagement activities conducted to date, and a proposed schedule for interim reporting to the CNSC.

3.2 Submission of Aboriginal Engagement Plan and Report

- The Aboriginal Engagement Plan and report should include:
 - a list of Aboriginal groups identified for engagement, and the methodology and rationale for identification
 - a summary of Aboriginal engagement activities that may have already taken place, including information about meetings (i.e. date, attendees, and topics discussed), information specific to the regulated facility or activity that has been provided to Aboriginal groups, any issues that have been raised, and any proposed mitigation measures
 - a description of planned future engagement activities
 - a proposed interim status reporting schedule.

HSM Comment: HSM supports the requirement for an Aboriginal Engagement Plan and report to be provided within a project description or licence application.

3.2.1 Content of Aboriginal Engagement Plan and Report

- Key factors to consider when determining which Aboriginal groups to engage include:
 - historic or modern treaties in the region of the regulated facility or activity
 - proximity of the regulated facility or activity to Aboriginal communities
 - Aboriginal community engagement protocols and agreements
 - traditional territories
 - traditional and current use of lands
 - governance structure (i.e. confirming the names of elected or designated authorities who represent the Band and/or Aboriginal organization).

HSM Comment: HSM supports the key factors listed above.

- CNSC encourages the development of an Engagement Work Plan that is reasonable to both parties. When developing an Aboriginal Engagement Work Plan, licensees should consider the following:
 - assignment of a consistent representative
 - face-to-face meetings
 - incorporation of a variety of engagement forums and techniques (eg. letters, phone calls, presentations, working groups)
 - schedules and workloads of the Aboriginal groups involved
 - potential engagement protocols
 - communication with the identified Aboriginal groups throughout the licensing period of the regulated facility or activity.

HSM Comment: HSM supports the requirement for an Engagement Work Plan that is satisfactory to both parties.

- Before submitting a licence application or project description, licensees should conduct Aboriginal engagement activities as early as possible if one of the following criteria apply:
 - the proposal falls outside of the licensing basis, such as changes to the size of the footprint of a facility
 - the proposal can result in changes to the environment
 - the proposal may adversely impact an Aboriginal group's ability to practise its potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title.

HSM Comment: HSM supports the requirement to conduct Aboriginal engagement activities as early as possible.

- Licensees should have a records management process in place to record Aboriginal engagement activities. Records management tools may include an engagement log that lists activities by date, time and individual group, an issue tracking table that identifies issues raised by groups and whether these have been addressed or remain outstanding.

HSM Comment: HSM supports the requirement to have a records management process in place to record Aboriginal engagement activities.

- The CNSC may participate in licensees' Aboriginal engagement activities, where appropriate. Joint licensee/CNSC activities offer Aboriginal groups the opportunity to understand the regulated facility or activity and the roles and responsibilities of licensees and the CNSC, and to raise questions and concerns with both parties.

HSM Comment: HSM supports the CNSC participation in licensees' Aboriginal engagement activities, and to develop its own Aboriginal consultation activity plans.

3.2.2 CNSC Activities Following Receipt of Aboriginal Engagement plan and Report

- After CNSC receives the Aboriginal Engagement Plan with a project description and/or licence application, it will provide feedback and may request further information or seek clarification. CNSC will also conduct its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities (if appropriate).

HSM Comment: HSM supports the CNSC conducting its own analysis to determine if Aboriginal consultation activities are required by the Crown, and the scope of those activities.

3.4 Aboriginal Engagement Section Within the Commission Member Document

- The Aboriginal engagement section of a licensee CMD should include:
 - a list of identified Aboriginal groups
 - a summary of Aboriginal engagement activities conducted
 - a summary of concerns raised related to potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title
 - a summary of potential adverse impacts on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title
 - a summary of mitigation measures, or plans and proposed timing for mitigation measures to address adverse impacts
 - a summary of actions taken, or proposed actions to be taken, to address previously unidentified issues or impacts raised by the CNSC

- a summary of planned Aboriginal engagement activities.

HSM Comment: HSM supports the Aboriginal engagement section of Commission Member Documents having the items listed above.

3.5 Keeping Aboriginal Groups and CNSC Informed After a Commission Decision

- Licensees may also be required to update the CNSC about their continued Aboriginal engagement activities; eg. the status of mitigation and accommodation measures. Licensees should also update the CNSC on new issues raised by Aboriginal groups with respect to an adverse impact on potential or established Aboriginal and/or treaty rights and related interests, including Aboriginal title, which could affect future operations of the regulated facility or activity or a future licence application. CNSC will advise the licensee on when and how this information is to be provided, but will use existing processes, annual reporting, etc.

HSM Comment: HSM supports the requirement for licensees to update the CNSC about their continued Aboriginal engagement activities.

3.6.2 CNSC Requests for Aboriginal Engagement Plans and Reports In Cases of Non-Applicability

- CNSC will sometimes review licence applications for regulated facilities or activities to which this document's requirements do not apply. This is in order to determine if Aboriginal engagement activities are appropriate. Following its review of such licence applications, the CNSC may still request the submission of an Aboriginal Engagement Plan and report. Aboriginal engagement activities may be appropriate if licensees have, for example, made commitments during Commission proceedings or were given direction by the Commission.

HSM Comment: HSM supports the CNSC to sometimes review licence applications in order to determine if Aboriginal engagement activities are appropriate.

Appendix A: Considerations for Aboriginal Engagement

- Appendix A – Considerations for Aboriginal Engagement provides questions that may guide licensees in determining if Aboriginal engagement is appropriate, and if so, to what extent. The questions include:
 - Does the Aboriginal group claim traditional territory that encompasses the location of the proposed regulated facility or activity?
 - Are there any First Nation reserve lands or Aboriginal communities near the proposed regulated facility or activity?
 - Are you aware of any communication from Aboriginal groups who are raising concerns about the proposed regulated facility or activity or similar facilities or activities in the area?
 - Are you aware of any past grievances or issues that an Aboriginal group may have with your industry or organization? How were these grievances addressed?
 - Have any Aboriginal groups expressed concerns about the proposed regulated facility or activity and suggested any remedial measures that may accommodate the adverse impacts on their rights and/or related interests, including Aboriginal title?
 - Does the proposed regulated facility or activity involve lands or resources that are currently the subject of land claim negotiations or are part of existing comprehensive land claim agreements or self-government agreements?
 - Are you aware of the nature and scope of any asserted rights and/or related interests, including Aboriginal title, in the area?
 - Has the Aboriginal group continually occupied the area near the regulated facility or activity?
 - Does the group still occupy the area? If the Aboriginal group does not still occupy the area, at what period of time did they occupy it?
 - Are there historical and/or current traditional Aboriginal practices occurring in the area?
 - Is the Aboriginal group alleging that the claimed rights were exercised prior to European contact (or for the Metis, prior to effective control)? Do they continue to exercise these rights today in a traditional or modernized form?

- Could the status of land claims and self-government agreements have implications with respect to the proposed regulated facility or activity?
- Are there any cultural activities or events that may prevent many community members from participating in engagement activities?
- Is the Aboriginal group a signatory of a historic or modern treaty?
- Does the Aboriginal group have a consultation protocol?
- Has the Aboriginal group been involved in recent litigation or landmark court cases?
- Is the Aboriginal group involved in the negotiation for treaty land entitlements?
- Is the Aboriginal group currently involved in any other consultations with industry or government?

HSM Comment: HSM supports the list of questions given above in order to determine if Aboriginal engagement activities are appropriate, and if so, to what extent.

I trust you will give our comments your careful consideration.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "G. Govier".

George Govier
Co-ordinator Lands, Resources, and Consultation
Historic Saugeen Metis