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MR. BRIAN TORRIE
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1.03.02

FILE DOSSIER	1-8-8-0
REFERRED TO RÉFÉRÉ À	Torrie, B.

Dear Mr. Torrie:

NWMO Comments on CNSC Draft REGDOC-2.9.1, Environmental Protection: Environmental Policy, Assessments and Protection Measures

The purpose of this letter is to provide NWMO comments on the CNSC draft document REGDOC-2.9.1, Environmental Protection: Environmental Policy, Assessments and Protection Measures.

NWMO believes that draft regulatory document requires further clarifications with respect to the regulatory guidance and CNSC staff expectations of potential applicants and current licensees regarding environmental assessments for nuclear facilities or activities under the current legislation. NWMO's detailed comments on the draft REGDOC-2.9.1 are attached.

NWMO appreciates the opportunity to review the draft regulatory document. If you have any questions regarding this submission, please contact Dr. Mihaela Ion, Senior Advisor, Regulatory Strategies, at (647) 259-2990.

Sincerely,

Paul Gierszewski
Director, Safety & Licensing

Attach.

cc. K. Glenn – CNSC (Ottawa)
cncs.consultation.ccsn@canada.ca

ATTACHMENT

Attachment to NWMO letter from Paul Gierszewski, "NWMO Comments on CNSC Draft REGDOC-2.9.1, Environmental Protection: Environmental Policy, Assessments and Protection Measures"

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#	Applicable Section, Page	Comment	Proposed Change
1.	Sec. 1.2, p.1 Sec. 1.3, p.2	<p>The scope in Sec. 1.2 notes that "all licence applications are subject to an environmental assessment...". The document is unclear on how this process would be applied to assess applications for certification of packages and applications for licences to transport nuclear substances.</p> <p>It is also noted the <i>Packaging and Transport of Nuclear Substances Regulations, 2015</i> have been omitted from the list of relevant legislation in Sec. 1.3.</p>	Clarify whether this regulatory document applies also to applications for certification of packages and applications for licences to transport nuclear substances.
2.	Sec. 2, Fig. 1, p.4	The process chart shown in Figure 1 should start with the Pre-Application Consultation prior to the Licence Application box. This would reinforce CNSC's recommendation to begin discussions as soon as an activity or facility is planned (Sec. 3.2.2).	Modify Figure 1 to start with a Pre-Application Consultation box, followed by the Licence Application box.
3.	Sec. 2, Fig. 1, p.4	Figure 1 indicates that an initial Environmental Risk Assessment (ERA) is expected to be submitted by all applicants/licensees. This initial ERA is shown as a separate box so it makes it seem like this is additional to licence application, rather than part of a licence application.	Remove the initial ERA from Figure 1 as a separate box and include it in the Licence Application box.
4.	Sec. 3.1, p.7	"Subject to an ongoing EA" is potentially confusing (Notes, 2 nd bullet). This could mean be interpreted to mean that the environmental assessment (EA) does not come to a conclusion.	Clarify text to distinguish between completed EAs and the ongoing monitoring of environmental protection measures and ERA updates.
5.	Sec. 3.1, p.7	The description of the EA process under CEAA 2012, briefly summarized in this section, does not mention the EA decision under the CEA Act.	Include the EA decision under CEAA 2012 in the summary description of the process.

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6.	Sec. 3.2, p.8	Section 3.2 "Environmental assessments under the NSCA" does not clearly describe the steps of the process similarly to the "EA under CEAA" description in Appendix A. For example, Sec. 3.2.1 is titled "Overview of the process for an environmental assessment under the NSCA" and it only includes some high level information about the process. The steps of the process are however presented in Sec. 3.2.2 "Roles and responsibilities for an environmental assessment under the NSCA". Sec. 3.2.2 includes a mixed description of roles and responsibilities and process.	Revise the description of the "Environmental assessment under the NSCA" to clearly identify the steps of the process.
7.	Sec. 3.2.1, p.8	This document requires further clarity on the information that applicants/ licensees are required to submit for an "EA under the NSCA". Using general statements such as " <i>...information that the applicant or licensee is required to submit to the CNSC through the established licensing process, such as the licence application and its supporting documentation, and information on their environmental protection measures</i> " provide insufficient guidance.	Provide additional guidance on the information required to be submitted by the applicant/licensee to support an EA under the NSCA.
8.	Sec. 4.1, p.13	One of the requirements related to ERA states that: " <i>The ERA shall be completed in a systematic, scientifically defensible manner that identifies, quantifies and characterizes the risk posed by releases of nuclear and hazardous substances and physical disturbances (stressors) on <u>all</u> biota (human and non-human)</i> " [emphasis added]. This requirement, interpreted literally with respect to all biota, is not feasible.	Revise the requirement by replacing "all biota" with " <u>representative biota</u> ", and include a definition of "representative biota" in the Glossary, e.g. Biota that are representative of the range of habitats and tropic levels in the study area.
9.	Sec. 4.1.1, p.14	Under " <i>Requirements</i> ", the term 'minimize' when referring to effects associated with various disturbances and releases is difficult to substantiate or verify, if used as a regulatory requirement.	Suggest using 'mitigate' or 'reduce' instead of 'minimize' when referring to effects. Revise the following as suggested below: "[...] and also to prevent or <u>minimize mitigate</u> any effects associated with those disturbances and releases."

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10.	Sec. 4.1.1, p.14	Under " <i>Requirements</i> ", it is stated that " <i>As interactions with the environment and the potential effects are identified, the licensee shall determine whether modifications to the design or activity could eliminate or mitigate the effect.</i> " Consistent with earlier text in this paragraph referring to "reasonable precautions", the requirement should be to identify "reasonable modifications".	Modify the sentence as suggested below: "As interactions with the environment and the potential effects are identified, the licensee shall determine whether <u>reasonable</u> modifications to the design or activity could eliminate or mitigate the effect."
11.	Sec. A.1 , p.34	CNSC commits to a 24-month timeline to complete an integrated EA and licensing process. No timeline is however provided for completing a sequential EA and licensing process.	Clarify if there is timeline for the sequential EA and licensing process or not.
12.	Sec. A.2, Step 2, p.37	This step suggests that the project description submitted along with a licence application would be different for the integrated approach vs. the sequential approach. For the integrated approach, it is stated that the project description would provide information as set out in the <i>Prescribed Information for the Description of a Designated Project Regulations</i> . For the sequential approach however, there is no reference to the aforementioned regulations, and it is noted that "minimum information needed to start the EA process" would be provided.	Provide further details on the level of detail required for the project description submitted for both the integrated approach and the sequential approach. Alternatively see changes in Comment #13 below.
13.	Sec. A.2, Step 2, p.37	In an integrated approach, it is suggested that the applicant should submit to the CNSC, in addition to the licence application, a project description that provides the information set out in the <i>Prescribed Information for the Description of a Designated Project Regulations</i> . Sec. 8 of CEAA 2012 however, does not require a designated project subject to an EA for which the CNSC is the responsible authority to meet all the information requirements in the <i>Prescribed Information for the Description of Designated Project Regulations</i> .	Modify the following sentence as suggested below: "For <u>an integrated either</u> approach, the applicant submits, in addition to the licence application, a project description that provides <u>such information</u> set out in the <i>Prescribed Information for the Description of a Designated Project Regulations</i> <u>as is required by the Commission and/or the CNSC staff.</u> "

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14.	Sec. A.2, Step 5, p.38	There should be some elaboration as to how the EA Guidelines are developed. Scoping of the listed factors which must be taken into account in the EA pursuant to Sec. 19 (1) CEAA is within the exclusive discretion of the responsible authority which, in the case of CNSC designated projects, is the CNSC (Sec.15 CEAA). While CEAA requires that the EA must take into account these listed factors, the way this is done, the extent and form of the consideration required in each particular case is ultimately left to the Commission, as the responsible authority.	Modify the following paragraph as suggested below: <i>"The EA guidelines contain CEAA –related decisions such as additional factors to be considered and the scope of all factors. The EA guidelines contain CNSC staff recommendations to the Commission requirements on the level of public participation in the EA. The manner in which factors are considered is set out in the EA guidelines and is determined by the Commission based on the particular circumstances of each project."</i>
15.	Sec. A.2, Step 5, p.38	The description of this step mixes up the draft EA Guidelines, which are CNSC staff recommendations, with the final EA Guidelines, which are approved by the Commission. The text should only refer here to the approved EA Guidelines.	Revise the text to make reference only to the approved EA Guidelines, as suggested below: <i>"The EA guidelines contain CNSC staff recommendations to the Commission requirements on the level of public participation in the EA."</i>
16.	Sec. A.3.2 , p.41	Consistent with comment #14 above, it should be made clear that the Environmental Impact Statement (EIS) addresses environmental effects in accordance with the scope of the factors set by the CNSC in the EA guidelines. The format or methodology for determining those factors is set out in the EA guidelines, or if there are no guidelines, in the scoping of factors ultimately approved by the Commission. The EA Guidelines can include the format for scoping factors, including any alternative means. For example, instead of identifying the criteria used to eliminate alternative means such as different project designs or locations in the EIS itself, the EA Guidelines can, as part of the CNSC decision over scoping, set out a process, consistent with the purposes set out in Sec. 4 of CEAA, for eliminating such alternative means from further consideration in the EIS.	Modify the following paragraph as suggested below: <i>"The EIS should also describe the environmental effects of each alternative means. The process or criteria used to identify alternative means as unacceptable, <u>and</u> how these processes or criteria were applied. should be described, as The EIS-should also describe the processes or criteria used to examine the environmental effects of each remaining alternative means to identify the preferred alternative."</i>
17.	Sec. B.3, p.46	Paragraph 4 says 'study area', but does not give an indication of scale.	Suggest local study area would be appropriate, unless the expected effects extend into the regional study area.

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18.	Sec. B.5, p.48	Paragraph 6 says: <i>"The applicant or licensee should provide baseline characterization of radionuclide and hazardous substance levels in vegetation and other non-human biota to support human and ecological risk assessment. The characterization should also take into consideration the baseline conditions of other applicable environmental components (such as the atmospheric environment)"</i> .	A similar statement should be added to Sec. B.3, Aquatic Environment.
19.	Glossary, p.58, Environmental Assessment	As this document includes an environmental assessment process under the CEAA 2012 for designated projects, it would be expected that the terminology from CEAA 2012 would be reflected in the Glossary. However, the general definition for "environmental assessment" is inconsistent with that in the CEA Act, and also with that in the CSA N288.6-12, <i>Environmental Risk Assessment at Class I Nuclear Facilities and Uranium Mines and Mills</i> . Changing the general definition from the Act creates unnecessary confusion.	Replace the general EA definition currently included in the Glossary with the definition included in the CEA Act 2012. Label this as "EA under CEAA", to clarify how it differs from "EA under NSCA".
20.	Glossary, p.60, Precautionary Principle	Joint Review Panels in both the <i>Darlington Nuclear New Build</i> and the <i>Deep Geologic Repository for Low and Intermediate Level Nuclear Waste</i> have relied upon the Canadian Privy Council Office's "A Framework for the Application of Precaution in Science-based Decision Making about Risk" first published in 2003 to define the precautionary principle. While the glossary definition includes some of the principles in the Privy Council Document, the glossary does not reflect par. 4.7 of the Framework which provides that <i>"decision makers should also consider other factors such as societal values and willingness to accept risk, economic and international considerations"</i> when assessing the proportionality of precautionary measures.	Under <u>Source</u> add the following document as the first source : <u><i>"A Framework for the Application of Precaution in Science-based Decision Making about Risk, Office of the Privy Council, 2003)"</i></u>