

Thank you for the opportunity to provide comments on the Draft Regulatory Document REGDOC-2.11.1, *Waste Management, Volume III: Assessing the Long-Term Safety of Radioactive Waste Management, Version 2* [1]. My comments follow.

1.0 Introduction

In the CNSC's invitation to comment [2] on the draft Regulatory Document [1], it is stated that:

REGDOC-2.11.1, *Waste Management, Volume III: Assessing the Long-Term Safety of Radioactive Waste Management*, version 2, provides requirements and guidance to licensees and applicants for developing a safety case and supporting safety assessment for the long-term management of radioactive waste.

REGDOC-2.11.1, *Waste Management, Volume III*, v2 will supersede:

- REGDOC-2.11.1, *Waste Management, Volume III: Assessing the Long-Term Safety of Radioactive Waste Management*
- G-320, *Assessing the Long term Safety of Radioactive Waste Management*
- P-290, *Managing Radioactive Waste*

2.0 Deletion of Regulatory Policy P-290, *Managing Radioactive Waste*

The CNSC's invitation to comment [2] states that the reference to Regulatory Policy P-290, *Managing Radioactive Waste* [3] has been deleted as the P-290 content has been included as Appendix A of the draft Regulatory Document [1].

It is inappropriate to delete the regulatory policy and include the text in the REGDOC, since the regulatory policy "... describes the philosophy that underlies the Canadian Nuclear Safety Commission's (CNSC) approach to regulating the management of radioactive waste and the principles that are taken into account when making a regulatory decision concerning radioactive waste management" [3], whereas the REGDOC merely "provides requirements and guidance to licensees and applicants for developing a safety case and supporting safety assessment ..." [1].

With the deletion of Regulatory Policy P-290, there would be no policy statement to guide the Commission in making regulatory decisions concerning the management of radioactive waste (see extract from Regulatory Policy P-290 that is appended to these comments).

In fact, the statement [2] that the content of Regulatory Policy P-290 has been incorporated into the draft Regulatory Document [1] is incorrect. The draft Regulatory Document [1] does *not* contain the content of Regulatory Policy [3], either in the main text or in an appendix. If the CNSC continue with this proposed course of action, the regulatory philosophy and principles that are taken into account

when making a regulatory decision concerning radioactive waste management as currently expressed in P-290 will be entirely deleted from the CNSC's regulatory documentation.

3.0 Damage to Regulatory Credibility

Regulatory Policy P-290 [3] is part of the defence-in-depth that prevents the management of radioactive waste causing an unreasonable risk to the health and safety of persons and the protection of the environment.

In deleting this policy, there is an increased likelihood that inappropriate radioactive waste management decisions will be made that result in unsafe facilities and additional remediation costs that would be a burden on the public purse.

The deletion of Regulatory Policy P-290 will give succour to those who consider the CNSC to be a captured regulator and will damage the credibility of the CNSC in the eyes of Canadians.

4.0 Damage to the Relationship with International Partners

Noting that Canada has a treaty obligation under the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* [4] to pay due regard to internationally endorsed criteria and standards with respect to radioactive waste management, our international partners will likely be concerned over the deletion of a policy (Regulatory Policy P-290 [3]) that was well aligned with international practice.

Additionally, Canada has treaty obligations under the *Comprehensive Economic and Trade Agreement* with the European Union (CETA) [5]. In ratifying CETA, Canada has expressly reaffirmed (Article 24.4 of CETA) *its commitment to effectively implement in its law and practices, in its whole territory, the multilateral environmental agreements to which it is party*. This would, of necessity, include its obligations with respect to radioactive waste management under the *Joint Convention* [4].

Additionally, under Article 24.5 of CETA:

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their environmental law.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law to encourage trade or investment.

The deletion of Regulatory Policy P-290 [3] will be seen as a derogation from environmental law that is contrary to Article 24.5 of CETA.

5.0 Damage to the Canadian Nuclear Industry

The deletion of Regulatory Policy P-290 [3] will be seen as a degradation in Canada's commitment to the health and safety of persons and the protection of the environment.

This will damage the reputation of the Canadian nuclear industry in the eyes of Canadians and our international partners, resulting in reduced investment in the sector.

6.0 Recommendation

I recommend that the Canadian Nuclear Safety Commission cease and desist the deletion of Regulatory Policy P-290 [3].

7.0 References

- [1] Canadian Nuclear Safety Commission, Draft Regulatory Document REGDOC-2.11.1, *Waste Management, Volume III: Assessing the Long-Term Safety of Radioactive Waste Management, Version 2*, 2017 (<http://www.nuclearsafety.gc.ca/eng/pdfs/regulatory-documents/regdoc-2-11-1/REGDOC-2-11-1-Waste-Management-Volume-III-Safety-Case-Long-Term-Radioactive-Management-ver2-eng.pdf>).
- [2] Canadian Nuclear Safety Commission, *Update: Invitation to comment on draft REGDOC-2.11.1, Waste Management, Volume III: Assessing the Long-Term Safety of Radioactive Waste Management*, 2019. (<http://www.nuclearsafety.gc.ca/eng/acts-and-regulations/regulatory-documents/history/regdoc2-11-1-v3.cfm>)
- [3] Canadian Nuclear Safety Commission, *Managing Radioactive Waste*, Regulatory Policy P-290, 2004.
- [4] International Atomic Energy Agency, *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*, International Law Series No. 1, 2006.
- [5] Canada/European Union, *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union [and its member states, the Kingdom of Belgium, the Republic of Bulgaria, ...] of the other part*, 2017.

Extract from Regulatory Policy P-290 [3]

The following policy statement would be deleted by the CNSC's proposed course of action.

POLICY STATEMENT

When making regulatory decisions concerning the management of radioactive waste, it is the policy of the Canadian Nuclear Safety Commission to consider the extent to which the owners of the waste have addressed the following principles:

- a) The generation of radioactive waste is minimized to the extent practicable by the implementation of design measures, operating procedures and decommissioning practices;
- b) The management of radioactive waste is commensurate with its radiological, chemical and biological hazard to the health and safety of persons and the environment and to national security;
- c) The assessment of future impacts of radioactive waste on the health and safety of persons and the environment encompasses the period of time when the maximum impact is predicted to occur;
- d) The predicted impacts on the health and safety of persons and the environment from the management of radioactive waste are no greater than the impacts that are permissible in Canada at the time of the regulatory decision;
- e) The measures needed to prevent unreasonable risk to present and to future generations from the hazards of radioactive waste are developed, funded and implemented as soon as reasonably practicable; and
- f) The trans-border effects on the health and safety of persons and the environment that could result from the management of radioactive waste in Canada are not greater than the effects experienced in Canada.

It is also the policy of the CNSC to consult and cooperate with provincial, national and international agencies to:

- g) Promote harmonized regulation and consistent national and international standards for the management of radioactive waste; and
- h) Achieve conformity with the measures of control and international obligations to which Canada has agreed concerning radioactive waste.