



May 4, 2017

The Honorable Catherine McKenna, P.C. M.P.
Minister of Environment and Climate Change
200 Sacre-Coeur Boulevard
Gatineau, QC K1A 0H3

Dear Minister McKenna:

I am writing on behalf of the Canadian Nuclear Association (CNA) to provide our initial feedback on the Expert Panel final report on Canada's environmental assessment (EA) process. The CNA has approximately 100 members, representing over 60,000 Canadians employed directly or indirectly in uranium mining and exploration, fuel processing, electricity generation and the production and advancement of nuclear medicine. Our members have operated under every federal EA regime and have considerable direct experience conducting and obtaining approval for evidence-based environmental assessments that incorporate public and Indigenous considerations, and implement and report on mandatory follow-up and monitoring programs.

First, we would like to emphasize that the nuclear sector is unique in Canada, operating safely for over 50 years. In addition to environmental requirements faced by other electricity sources, nuclear deals with a higher threshold of specialized technical issues related to nuclear safety and security, radiation and groundwater monitoring, discrete waste stream management, spent nuclear fuel storage and decommissioning processes. These differences are part of the reason why environmental assessments for nuclear projects have been dealt with by the Canadian Nuclear Safety Commission, a regulatory agency able to assess and manage the scope of nuclear assessments.

The *Canadian Environmental Assessment Act* is arguably the most important piece of federal environmental legislation in Canada. The Expert Panel's report envisions a wholesale reform of the Act and the entire environmental assessment regime, including the consolidation of Responsible Authorities under one Agency. These changes, some of which are highly theoretical and unprecedented, will have significant real world implications for all projects in Canada and for the nuclear sector in particular. As such, the CNA believes the federal government needs to extend the period for consultation and comment on these significant recommendations in order for the public, indigenous communities and industry to adequately consider and thoughtfully comment on the changes being proposed. Consideration must be given to practical application of these changes and the consequences – intended and unintended – of changes on project timelines, on roles and responsibilities and on regulatory coherence and efficiency.

The CNA and its members have serious concerns about the viability of many of the recommendations in the report not only as they impact the nuclear industry but also as they impact the opportunities for future development and investment. CNA notes that the mandate from the Prime Minister included “to get resources to market”, and doubts that the proposals in the Expert Panel report would satisfy that direction. CNA looks forward to having an opportunity to discuss those concerns in more detail, but in this response, we will focus on the key issues from a nuclear perspective.

The Expert Panel recommended that a single authority have the mandate to conduct and decide upon impact assessments (IA) on behalf of the federal government and, further, that the IA authority be established as a quasi-judicial tribunal empowered to undertake a full range of facilitation and dispute-resolution processes. The rationale provided for these recommendations appears to be based on public demand for independent, transparent oversight in IA-decision making, though the case that this is not currently in place is not substantiated. Change for the sake of change will not yield better environmental or safety results.

As you know, the Canadian Nuclear Safety Commission (CNSC) is currently the Responsible Authority for nuclear projects. The CNSC is in fact an independent and transparent quasi-judicial body that already fulfils many of the recommendations of the Report, addressing the public demand in that regard, as well as being especially qualified to deal with the unique characteristics of the sector. The CNSC licensing and EA practices are evidence-based and use the best available scientific information and methods, while also taking account of Indigenous knowledge and public/community concerns through its open and transparent licensing process.

The CNA proposes that the nuclear industry is an exception to the need for a single regulator and that the CNSC should remain the Responsible Authority for EAs involving nuclear projects.

When consideration was first given to regulating nuclear activities in Canada, it was recognized as an area of federal interest and one that required considerable specialized technical knowledge to ensure its sustainable development. This resulted in the creation of a single regulatory body known then as the Atomic Energy Control Board (AECB) and now known as the CNSC. The mandate of the CNSC has grown over time (for example: there were no EAs when the AECB was first setup), but the fundamental principle of a single life-cycle federal regulator that oversees the sustainable development of the nuclear industry in Canada has not changed.

The CNA believes that the practice of having a single regulator for all aspects of nuclear projects has been highly successful and should continue for the following reasons:

- The first step in a credible EA process is a thorough technical review of the proposed project and its potential impacts on the environment to determine the list of studies that are required to inform decision-making. Many of the potential impacts that must be considered in relation to a nuclear project are related to radiation protection from both a human health and environmental perspective. This work must be guided and overseen by an agency with significant and specialized scientific expertise.
- The CNSC has highly trained, specialized scientific and technical staff in a broad range of disciplines including nuclear science and engineering, safety analysis, safety management, human factors, environmental and radiation protection, security, nuclear emergency management and safeguards and nuclear non-proliferation. The CNSC is the only place in the federal government with the necessary expertise to conduct nuclear-related EAs and this expertise would need to be duplicated under a central regulator. This would be inefficient as this same expertise is needed for the licensing process.
- One of the unique aspects of the CNSC as a regulator is the use of licences. While other federal regulators issue licences, their timeframes and scope are usually more limited. The CNSC's licensing regime and regulatory framework cover the entire life-cycle of most projects and are subject to the *Nuclear Safety and Control Act (NSCA)* and its regulations. This allows the CNSC to not only conduct the EA in the planning phase of a project but also to ensure that monitoring programs and follow-up conditions required by the EA are directly integrated into the licensing process throughout the various stages of the project. This ensures that operational performance of facilities and EA predictions are aligned throughout the life of the project.
- The Expert Panel recommended the establishment of a post-EA phase to ensure project implementation. The CNSC already has well-established and rigorous inspection, monitoring, compliance and follow-up programs in place. The CNSC's compliance and monitoring programs include on-site inspections by CNSC-certified and -trained inspectors who have very broad statutory powers under the NSCA to enforce regulatory requirements.
- Under the NSCA, the CNSC has a legislated mandate to ensure the protection of the environment and health and safety of persons. The CNSC has implemented its own Independent Environmental Monitoring Program to verify that the public and the environment around nuclear facilities are not affected by nuclear activities. This is undertaken through independent sampling and analysis and is available to the public on the CNSC website.

The Expert Panel report highlighted the need for informative and meaningful input from the public and Indigenous peoples as well as the need for transparency throughout the process. Again, the CNA would suggest that the CNSC is leading the way in these areas.

- Highly technical assessments and discussions that occur around nuclear safety have led to a false impression among some that the CNSC lacks independence and neutrality. While there are often meetings/discussion between CNSC staff and licensees to ensure the same understanding of issues, information and proposed solutions, the CNSC ensures that all annual compliance reports and regulatory oversight reports are available to the public.
- The CNSC's public Meeting and Hearing process enables interested stakeholders to participate directly and provide their evidence and perspectives. The independent Commission members challenge licensees and CNSC staff to address that evidence. Funding is also available for participants to obtain independent expert analysis and support.
- The CNSC has clearly defined public information and disclosure protocols that include full public participation, which in our view actually allows for greater public and Indigenous input than is required under the existing CEAA regime. Follow-up programs are included in licensing and licensees must file annual compliance reports. CNSC staff prepares annual regulatory oversight reports. In addition, these facilities are subject to periodic re-licensing processes. These processes are all public and provide the opportunity for public input through written or oral interventions before the Commission.
- The CNSC has a proactive and transparent Aboriginal consultation policy and process, which continues throughout the life-cycle of a project. The Canadian nuclear industry recognizes the critical role Indigenous Peoples play not only during the EA process but also throughout the life-cycle of the project. Our members are committed to engaging with Canada's Indigenous Peoples and working continuously to improve that relationship.

Another aspect of the Expert Panel report of concern is the broad scope of projects that the Expert Panel recommended be subject to EA. Stepping away from the nuclear sector for a moment, the CNA would observe that the proposed project list is so extensive, subjective and vague that the proposed lines being drawn are essentially meaningless. As a consequence, the proposed new agency could be charged with dealing with so many projects that the system would be overwhelmed and unworkable – if current plans and activities were to proceed in the face of this new regime. There needs to be a significant paring of the list to ensure a balance between a comprehensive EA to minimize environmental impact and the need for development, economic growth and the ability to get products to market.

With respect to the nuclear sector, the Expert Panel notes “activities related to nuclear energy” as an example of federal interest. The manner in which this phrase is used in the report is so broad and wide ranging that it causes grave concern to the nuclear industry. While the industry certainly accepts that new nuclear plants or mines need to be subject to an EA, there are many nuclear “activities” that have virtually no impact on the environment or where the impact is well known and understood. This phrasing is so broad as to potentially make almost any activity on an existing licensed site subject to an EA, which is further compounded by the use of “related to”. This is neither practical nor workable and would have no environmental or public benefit.

The CNA would suggest that the nuclear-related criteria for EA be “greenfield” projects or new nuclear power plants, mines or fuel processing facilities. CNSC already requires EAs for such projects. All other nuclear activities are subject to the CNSC’s existing comprehensive environmental protection framework and licensing process. The NSCA gives the CNSC the flexibility to deal with environmental issues beyond the scope of EA and the CNSC’s regulatory framework provides the authority to adapt environmental protection measures to reflect changes in the environment and scientific knowledge.

The last issue the CNA would like to highlight is the need for a transition period. The proposed changes are significant and, if enacted in any way, shape or form, will take time to implement. It is our view that there will need to be a significant transition period while the new process and structures are developed. This transition must not prevent projects from going forward. The CNA recommends that any projects already in the EA/regulatory process prior to the implementation date for any changes be “grandfathered” under the existing legislation and processes.

In closing, the CNA would like to thank you for the opportunity to provide this input and we would request an opportunity to meet with you in person to discuss this critical issue. If you require further information or have questions, then please contact Steve Coupland, Director, Regulatory and Environmental Affairs at couplands@cna.ca or 519-386-0704.

Sincerely,

John Barrett, Ph.D.
President and CEO
Canadian Nuclear Association