

Date: December 19th 2017

From: Ole Hendrickson

To: Candida Cianci, Environmental Assessment Specialist
Canadian Nuclear Safety Commission

By email: cnscc.ea-ee.ccsn@canada.ca

Subject line: Comments on the draft EIS for the In Situ Decommissioning of the WR-1 reactor (CEAA #80124)

CEAA Reference number: 80124

Comments:

Dear Ms. Cianci,

Attached please find comments on the proposed in-situ decommissioning of the WR-1 reactor (CEAA #80124).

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Subject: Comments on the draft EIS for the In Situ Decommissioning of the WR-1 reactor (CEAA #80124)

CNSC, as responsible authority for the environmental assessment process of designated nuclear projects under the *Canadian Environment Assessment Act* (CEAA) has determined that in-situ decommissioning of the WR1 reactor, proposed by the Canadian Nuclear Laboratories (CNL), is a designated project under section 37(b) of the *Regulations Designating Physical Activities*:

37 The construction and operation of a new... (b) facility for the long-term management or disposal of irradiated fuel or nuclear waste.

As described in Appendix A of CNSC REGDOC-2.9.1, *Environmental Principles, Assessments and Protection Measures*, the proponent of the WR-1 in-situ decommissioning project has chosen to follow a so-called “Integrated EA and licensing process”. This process is described in Figure 5 in Appendix A of REGDOC-2.9.1, which indicates that “public engagement” may occur after the licence application and project description have been received.

However, the only opportunity for “public review” or public feedback into the EA process (shown as a downward arrow in Figure 5) is after release of a CNSC EA report and a CNSC licensing document, that is, just before the CNSC hearing on the matter.

If followed strictly, this would represent an extreme limitation of public participation in the EA process. It would remove any opportunity for the members of the public (who, it should be noted, may include scientists and engineers with considerable technical expertise in the matter under consideration) to have input into the conduct of the EA.

The process developed by CNSC for environmental assessments under CEAA described in REGDOC-2.9.1 appears to be inconsistent with one of the purposes of CEAA:

“4 (1) The purposes of this Act are... (e) to ensure that opportunities are provided for meaningful public participation during an environmental assessment.”

That being said, Appendix A of REGDOC-2.9.1 also indicates that

The breadth and timing of public participation is at the discretion of the CNSC. For example, a public review period may be conducted on the project description to solicit the views of the public, Aboriginal groups and other stakeholders to help inform the conduct of the EA under CEAA 2012.

CNSC did choose to conduct a public review of the project description. *Appendix A to the Administrative Protocol for the Renewal of the Whiteshell Laboratories Licence and the Proposed In Situ Decommissioning of the WR-1 Reactor* indicates that a 30-day “Public comment period on project description”, led by CNSC, took place June 2 – July 4, 2016. Twelve comments were submitted.

However, *Appendix A to the Administrative Protocol* does not indicate how or when these comments would be addressed. On March 8, 2017, CNSC released a *Decision on the Scope of Environmental Assessments for Three Proposed Projects at Existing Canadian Nuclear Laboratories' Facilities*. This *Decision* encompassed the proposed in-situ decommissioning of the WR-1 Reactor and two other nuclear waste disposal projects proposed by CNL: the in-situ decommissioning of the Nuclear Power Demonstration (NPD) Reactor in Rolphton, Ontario; and the construction and operation of a so-called "Near Surface Disposal Facility" at the Chalk River Laboratories.

The scoping "*Decision*" applied to all three projects was that:

the Commission, pursuant to section 19 of CEAA 2012, determines the scope of the factors for the EA for each of the proposed projects to include the factors mandated in paragraphs 19(1)(a) to (h) of CEAA 2012, with no additional factors.

In merely restating the existence of section 19(1) of CEAA, the CNSC's "*Decision*" failed to address any of the substantive points raised in the comments submitted on the WR-1 in-situ decommissioning project (nor did it address the other two projects). It merely noted that comments had been submitted:

The Commission notes that the submissions from the public and Indigenous groups included questions and commentary about the projects, the project descriptions, engagement efforts and the EA process. The Commission concurs with the responses provided by CNSC staff to members of the public and the Indigenous groups, and further notes that the detailed responses from CNSC staff would be distributed to all commenters after the decision on the scope of the factors for the EAs has been made.

The "questions and commentary" submitted on the WR-1 project description included extremely detailed concerns about the proposal for in-situ decommissioning. For example, Baumgartner et al. pointed out that

- the original 2003 decommissioning plan for the Whiteshell site called for removal of all significantly radioactive materials to offsite disposal facilities;
- in-situ decommissioning would constitute a form of "near surface disposal", and
- near surface disposal is not appropriate for radioactive wastes with relatively high activity levels and long decay half-lives, such as are found in the WR-1 Reactor.

Table A of Appendix A of REGDOC-2.9.1 lists "Key steps for an environmental assessment under CEAA 2012." In "Step 5", the "Commission determines the scope of the EA." This key step occurred at a March 8, 2017 Commission meeting.

The "meeting" consisted of a single person, Dr. Michael Binder, who in addition to being a Commission Member is also President and CEO of the CNSC. Apparently, the practice of single-member "Commission meetings", and release of "decisions" on the day of the meeting, is not uncommon. But it certainly calls into question the purpose of having a Commission.

Also on March 8, 2017 CNSC posted a *Disposition Table of Public and Aboriginal Groups' Comments on Project Description* on the Canadian Environmental Assessment Registry website. CNSC Staff "dispositioned" the substantive comments on the WR-1 project with comments such as the following:

Although not required for designated projects regulated by CNSC, the CNSC has adopted within its EA process the requirement to submit a project description, as outlined in appendix A of REGDOC-2.9.1...

CNSC staff reviewed CNL's project description, and determined that sufficient information was provided to:

- meet the Prescribed Information for the Description of a Designated Project Regulations (SOR/2012-148) such that the project description is deemed complete and
- make a determination on the applicability of CEAA 2012.

Failure to give serious consideration to concerns raised by experts such as Baumgartner et al. during the project description phase has made the statement in Appendix A of CNSC REGDOC-2.9.1 that "An EA conducted under CEAA 2012 is a planning tool" false, in the case of the EA of WR-1 in-situ decommissioning.

The CNSC appears to be making up its own rules for environmental assessments done under CEAA. REGDOC-2.9.1 does not indicate how CNSC will provide opportunities for meaningful public participation, nor does it indicate how CNSC will use CEAA as a planning tool. The *Administrative Protocol* prepared by CNSC and the project proponent for the WR-1 EA also has serious gaps in terms of meaningful public participation – notably the failure to indicate how concerns raised in the project description phase would be addressed.

Nor does the draft EIS adequately address concerns about the long-term health and environmental impacts of leaving radioactive wastes with relatively high activity levels and long decay half-lives near to the surface and adjacent to the Winnipeg River.

The Brokenhead Ojibway Nation CNSC staff, in commenting on the project description, said that "all underground and above ground structures and systems should be removed and the earth be totally decontaminated." CNSC staff, in "dispositioning" these and other comments by this First Nation, said:

The Commission is the CNSC's decision-making body that makes EA and licensing decisions for all major nuclear projects. Decisions made by the Commission are not subject to any governmental or political review, nor may they be overturned by the Government of Canada.

The CNSC's "independence" from the Government of Canada is a serious impediment to proper engagement of Aboriginal peoples, the public, and independent technical experts in the environmental assessment process.

It is time for the Government of Canada to step in and

- suspend all environmental assessments of projects involving permanent disposal of radioactive waste;
- restart these projects under new environmental assessment legislation; and
- replace the CNSC as decision maker for nuclear projects.