

# Public Involvement in Nuclear Waste Environmental Assessments

Theresa McClenaghan

Executive Director and Counsel, Canadian Environmental Law Association

August 3, 2017

# Importance and Requirements re Public Involvement in Nuclear Waste Project Environmental Assessments

- ▶ Discussion Topics:
  - ▶ Current legislative requirements
  - ▶ What's working and what's not
  - ▶ Federal review of Environmental Assessment - what might be changing
  - ▶ Public involvement criteria
  - ▶ Why public involvement matters in nuclear waste proposals
  - ▶ International guidance

# Current CEAA 2012 Requirements re public involvement

- ▶ Canadian Environmental Assessment Act (2012) Defines an “interested party”:  
a person is an interested party if, in its opinion, the person is **directly affected** by the carrying out of the designated project or if, in its [federal authority or JRP] opinion, the person has **relevant information or expertise** (Section 2(2))
- ▶ One of the purposes of the CEAA is to ensure that opportunities are provided for meaningful public participation during an environmental assessment (section 4(1) (e))

# CEAA provisions re “public” involvement (2)

- ▶ Designation regulations require EA of certain projects including specified nuclear projects which include major nuclear waste facilities:
  - ▶ **37** The construction and operation of a new
    - ▶ (a) facility for the storage of irradiated fuel or nuclear waste, on a site that is not within the licensed perimeter of an existing nuclear facility; or
    - ▶ (b) facility for the long-term management or disposal of irradiated fuel or nuclear waste.
  - ▶ **38** The expansion of an existing facility for the long-term management or disposal of irradiated fuel or nuclear waste that would result in an increase in the area, at ground level, of the facility of 50% or more.

# CEAA provisions re public involvement (3)

- ▶ Minister may order an EA of a physical activity not otherwise designated where in Minister's opinion, public concerns may warrant an EA (section 14(2))
- ▶ As presently constituted, CEAA 2012 provides that it would be the CNSC that would conduct the EA (section 15)
- ▶ The RA must ensure that the commencement of an EA is posted on an internet site (section 17) - EAs under CNSC jurisdiction have information posted on both the CNSC and CEAA registries

# Example of an EA posting on CNSC site

The screenshot shows a web browser window displaying the CNSC website. The browser's address bar shows the URL: [www.nuclearsafety.gc.ca/eng/resources/environmental-assessments/ongoing/manitoba/decommissioning-whiteshell-reactor-1.cfm](http://www.nuclearsafety.gc.ca/eng/resources/environmental-assessments/ongoing/manitoba/decommissioning-whiteshell-reactor-1.cfm). The website's navigation menu includes: The Commission, Uranium, Reactors, Nuclear substances, Waste, Acts and regulations, and Resources. The main content area is titled "In situ decommissioning of the Whiteshell Reactor # 1".

**Resources**

- A - Z
- Aboriginal consultation
- CNSC guest speakers
- Doing Business with the CNSC
- Educational resources
- Forms
- Non-Proliferation
- Nuclear Facilities
- New nuclear projects**
- Darlington Nuclear Power Plant
- Ontario Power Generation Deep Geologic Repository
- The Matoush Uranium Exploration Project
- The Millennium Uranium Mining Project
- The Midwest Mining and Milling Project

**News Room**

- Presentations
- Protocols
- Publications
- Radiation
- Scientific and technical information

**Start date:** May 16, 2016  
**Reference number:** 80124  
**Proponent:** [Canadian Nuclear Laboratories](#)  
**Location:** Pinawa, Manitoba

**Latest Update**

- May 2017 - [Administrative Protocol between Canadian Nuclear Laboratories and the CNSC for the Renewal of the Whiteshell Laboratories Licence and the Proposed In Situ Decommissioning of the WR-1 Reactor](#) (PDF)
  - [Appendix A](#) (PDF)
- March 8, 2017 - [Record of Decision on the Scope of Environmental Assessments for Three Proposed Projects at Existing Canadian Nuclear Laboratories' Facilities](#)
- June 3, 2016 - [Notice of Participant Funding Offering](#) ([PDF](#))
- June 2, 2016 - [Public Comments Invited on Project Description](#) (source: CEAA website)
- May 16, 2016 - [Notice of Commencement of an Environmental Assessment](#) (source: CEAA website)

**About the project**

Canadian Nuclear Laboratories (CNL) is proposing to decommission the Whiteshell Reactor #1 (WR-1 Reactor), a former nuclear research reactor that operated until 1985. The WR-1 Reactor is located at the Whiteshell Laboratories (WL) site in Pinawa, MB, approximately 100 kilometres northeast of Winnipeg, near the towns of Lac du Bonnet and Seven Sisters.

CNL is proposing an *in situ* (leaving in place) decommissioning approach. *In situ* decommissioning of the WR-1 Reactor involves

# Same project on CEAA Agency site

The screenshot shows a web browser window with the URL [www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=80124](http://www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=80124). The page header features the Canadian Environmental Assessment Agency logo and the word "Canada" with a search bar. The main navigation menu includes: Environmental Assessments, Getting Involved, Acts and Regulations, Resources and Publications, and Compliance Promotion and Enforcement. The breadcrumb trail reads: Home > Registry > In Situ Decommissioning of the Whiteshell Reactor ...

**Canadian Environmental Assessment Registry**

- About the Registry
- Browse Projects
- Keyword Search
- Advanced Search
- FAQ
- Search Tips
- Privacy Notice

**Canadian Environmental Assessment Archives**

- Keyword Search
- Advanced Search
- Archived Class Screenings
- Environmental Assessments Commenced under the Former Canadian Environmental Assessment Act (prior to July 6, 2012)

**Projects under the James Bay and Northern Quebec Agreement**

- Current Projects

## In Situ Decommissioning of the Whiteshell Reactor #1

**Pinawa (Manitoba)**

**Reference number:** 80124  
**Federal Responsible Authority:** Canadian Nuclear Safety Commission  
**Proponent:** Canadian Nuclear Laboratories  
**Environmental Assessment Commenced:** 2016-05-16  
**Environmental Assessment Type:** Environmental Assessment by Responsible Authority  
**Status:** Environmental assessment in progress

### Latest Update

April 7, 2017 – Taking into account the public comments received on the Project Description, the Canadian Nuclear Safety Commission issued the [Record of Decision on the scope of this EA](#) 

### About the Proposal

Canadian Nuclear Laboratories (CNL) is proposing to decommission the Whiteshell Reactor #1 (WR-1 Reactor), a former nuclear research reactor that operated until 1985. The WR-1 Reactor is located at the Whiteshell Laboratories (WL) site in Pinawa, Manitoba, which is situated approximately 100 kilometres northeast of the city of Winnipeg and located near the towns of Lac du Bonnet and Seven Sisters.

The taskbar at the bottom shows several open PDF files: E-DOCS-#-52729....PDF, E-DOCS-#-53153....PDF, and 2017-08-16-17-Up....pdf. The system tray shows the time as 1:48 PM on 2017-08-15.

# Public comments and participation

- ▶ In addition to other factors such as environmental effects, an explicit requirement under CEAA 2012 is that the responsible authority take into account comments from the public (section 19)
- ▶ “The environmental assessment of a designated project may take into account community knowledge and Aboriginal traditional knowledge.” (section 19(3), emphasis added)
- ▶ Public participation is mandatory: “Subject to section 28, the responsible authority must ensure that the public is provided with an opportunity to participate in the environmental assessment of a designated project.” (section 24, emphasis added)

# Draft reports

- ▶ Under CEAA 2012, when the responsible authority is the CEAA Agency, it must make a draft report on an EA public, and seek comments on it (s. 25)
- ▶ No such requirement is specified when the RA is the CNSC or the NEB under the current Act; it would fall to those agencies to establish their rules subject to compliance with CEAA.

# Substitution

- ▶ Furthermore, under CEAA 2012 while the Minister may substitute a provincial EA or provincial agency process by Order for a federal EA, that is not an option when the RA is the CNSC or NEB under the current Act. (section 32)
- ▶ Where it is available, substitution may only be utilized if the public will have an opportunity to participate, have access to records in relation to the assessment “to enable their meaningful participation” and the report will be made public along with any conditions (section 34)

# Review panel

- ▶ While public interest is a governing consideration in a Minister's decision as to whether to refer an EA to a Review Panel, this is not an option under the current CEAA 2012 if the project is subject to CNSC or NEB approvals (section 38(6))
- ▶ Joint reviews with a province, of nuclear projects, are also excluded by virtue of the same exclusion

# Decision statements are public

- ▶ By virtue of section 55 the RA must post a decision statement on the internet and it is deemed to be a part of the licence issued to the proponent under the Nuclear Safety and Control Act (sections 55 and 56)

# Funding Programs

- ▶ The Agency and the RAs must establish funding programs to facilitate public participation in EAs
- ▶ The CNSC has done so: <http://nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/index.cfm> and states as follows:

“The Canadian Nuclear Safety Commission (CNSC) established the Participant Funding Program (PFP) in 2011 to:

  - ▶ enhance individual, not-for-profit organization and Indigenous group participation in the CNSC’s environmental assessment (EA) and licensing processes for major nuclear facilities (e.g., uranium mines, nuclear power plants, nuclear substance processing, or nuclear waste facilities)
  - ▶ assist individuals, not-for-profit organizations and Indigenous groups to bring value-added information to the Commission through informed and topic-specific interventions related to EAs and licensing (i.e., new, distinctive and relevant information that contributes to a better understanding of the anticipated effects of a project)”

# EA not working well

▶ Despite the language reviewed above from the current statute, CEAA 2012, EA in Canada has not been working well

▶ For example, in CELA's submission to a federal expert panel on EA, we said:

“Although public participation is entrenched as a statutory purpose of CEAA 2012, the Expert Panel has received considerable evidence from citizens, environmental groups and other stakeholders who encountered serious obstacles when attempting to participate in federal EA processes. These obstacles include: deficient or delayed public notices; short public comment periods; lack of timely access to all relevant documentation; inadequate awards of participant funding; and lack of basic procedural rights (e.g. cross-examination) in some recent cases.”

<http://www.cela.ca/sites/cela.ca/files/CELA-Submissions-Expert-Panel.pdf>

# Current consultation - CEAA reform

- ▶ In the government of Canada's recent review of much of its environmental legislation (CEAA, NEB Act, Fisheries Act, Navigation Act, Canadian Environmental Protection Act) a discussion paper that includes proposed reforms to CEAA has recently been released and public comments are due August 28, 2017:

<https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews.html>

# What might change re CNSC, EA and public involvement in the federal proposals

- ▶ Watchwords in the current federal discussion paper include “transparency”; opportunities for Indigenous peoples and the public to “meaningfully participate”; and to “regain public trust” (page 3 of the Discussion paper)
- ▶ The Interim principles that were articulated in January 2016 while the discussions ensued, also stressed science based decision making, evidence, and views of the public among others.
- ▶ The discussion paper noted there will still be “a strong role for expert regulators” including nuclear

# Federal EA processes and public - what's coming

- ▶ Examples of findings in the “Call to Action” section of the federal discussion paper reinforce some of the concerns that CELA and others have been expressing:
  - ▶ “Opportunities for Canadians to meaningfully participate are limited, particularly in project planning and monitoring of construction and operation”
  - ▶ “Information is difficult to access for the public and Indigenous peoples, making meaningful participation a challenge”
  - ▶ “Concern that not all expertise, science, evidence and Indigenous knowledge is fully considered, and that information presented by proponents is not adequately validated (page 6 of the Discussion paper)”

# Potential guiding principles in federal EA

- ▶ Among the Discussion paper's proposed EA guiding principles are:
- ▶ “Fair, predictable and transparent environmental assessment and regulatory processes that build on what works”
- ▶ “Inclusive and meaningful public engagement” (page 7)
- ▶ And under the title “Rebuilding Trust in the Project assessment System” is the following:
  - “Our proposal builds on the strengths of the existing system and includes seven crosscutting areas of change: Addressing Cumulative Effects; Early Engagement and Planning; Transparency and Public Participation; Science, Evidence and Indigenous Knowledge; Impact Assessment; Partnering with Indigenous Peoples and Cooperation with Jurisdictions” (page 8)

## Inconsistent access to information and limited public participation



## Open by default

### *Our current system can be improved:*

- On-line information on environmental and regulatory processes is not consistent and often difficult to navigate
- Limited public participation at key stages in the process
- The government does not consistently communicate the reason for federal decisions – making it difficult for Canadians to see how they have had an impact

### *We are considering:*

- **Open opportunities for meaningful public participation** in assessments and regulatory reviews
- **Eliminating the “standing” test** provided by the National Energy Board for those who wish to participate in assessments
- **Improving participant funding programs** for Indigenous peoples and the broader public to streamline applications and expand eligibility
- **Increasing user-friendly on-line public access** to project information generated during environmental and regulatory reviews, including follow-up monitoring, compliance and enforcement
- **Providing easy, on-line access** so that Canadians can track companies' progress as they meet the conditions required to advance their projects
- **Engaging Canadians in a two-way dialogue** on environmental assessment and regulatory processes through better use of social media

### **Transparency**

“Transparency is a broadly accepted feature of good governance.”

# What does credible public involvement look like?

- ▶ CELA endorsed the following principles developed by the national ENGO EA caucus in our brief to the federal government in December 2016 (See Lindgren: <http://www.cela.ca/sites/cela.ca/files/CELA-Submissions-Expert-Panel.pdf>):
  - ▶ Participation begins early in the planning and decision-making processes, is meaningful and builds public confidence;
  - ▶ Public input can influence or change the outcome/project being considered;

## Public involvement criteria (2)

- ▶ Opportunities for public comment are open to all interested parties, are varied, flexible, include openings for face to face discussions and involve the public in the actual design of an appropriate participation program;
- ▶ Formal processes of engagement, such as hearings and various forums of dispute resolution, are specified and principles of natural justice and procedural fairness are considered in formal processes;
- ▶ Adequate and appropriate notice is provided;

## Public Involvement Criteria (3)

- ▶ Ready access to the information and the decisions at hand is available and in local languages spoken, read, and understood in places potentially affected by proposed undertakings;
- ▶ Participant assistance and capacity building is available for informed dialogue and discussion;
- ▶ Participation programs are learning oriented to ensure outcomes for all participants, governments, proponents and participants;

# Public Involvement Criteria (4)

- ▶ Programs recognize the knowledge and acumen of the public; and,
- ▶ Processes are fair and open in order for the public to be able to understand and accept decisions.

(See EPA Caucus, Achieving Next Generation Environmental Assessment (December 14, 2016) at [http://eareviewexamenee.ca/wp-content/uploads/uploaded\\_files/epa-caucus-submission-to-expert-panel-2016-12-14.docx](http://eareviewexamenee.ca/wp-content/uploads/uploaded_files/epa-caucus-submission-to-expert-panel-2016-12-14.docx) )

# CEAA 2012 Potential Changes

- ▶ Prior to the current discussion paper, in 2016 the federal government appointed an independent panel to provide recommendations about how to reform Canadian EA - that panel issued its report later in 2016  
[https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#\\_Toc034](https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html#_Toc034)
- ▶ Among the issues the Panel canvassed, was that of public confidence in the major energy regulators also being the same entities conducting EA of the projects.

# Independent Panel (2)

- ▶ The Panel stated:
  - ▶ **“Public trust and confidence is crucial to all parties.** Without it, an assessment approval will lack the social acceptance necessary to facilitate project development. While some would likely favour the NEB and CNSC for the assessment of projects in their particular industries, the erosion of public trust in the current process has created a belief among many \* that the outcomes are illegitimate. This in turn has led some to believe that the outcomes are preordained and that there is no use in participation in the review process because views will not be taken into account. The consequence of this is a higher likelihood of protests and court challenges, longer time frames to get to decisions, and less certainty that the decision will actually be realized - in short the absence of a social licence. On the other hand, if there is trust in the authority conducting the IA, the outcome is more likely to be considered fair and thus be accepted by all parties, even if their particular positions do not win the day. **As such, an authority that does not have concurrent regulatory functions can be better held to account by all interests than can entities that are focussed on one industry or area and that operate under their own distinct practices.**” (Section 3.1 of the Panel report - emphasis added)

# CEAA 2012 Potential Changes

- ▶ CELA strongly endorses this perspective as outlined by the independent panel, regarding who should conduct the EA.
- ▶ However, on the issue of whether the major energy regulators should also be the entities conducting the EA, the current federal proposal did not follow the independent expert panel recommendation. Instead the current proposal states:
  - ▶ “For major energy transmission, nuclear and offshore oil and gas projects, assessments would be conducted jointly by the agency and life cycle regulators, using the regulators’ expert capacity and ensuring that safety and other key regulatory factors are considered as part of a single, integrated process.”

# CELA's submissions on major energy project EA reform

- ▶ CELA's view is that all of the problems identified by the expert panel and reinforced in the government's own discussion paper leading to a lack of public credibility in the EA processes and the role of the public in those processes will remain, with a consequent ongoing lack of social licence if the major energy regulators continue to conduct the project EAs, even together with an independent agency.
- ▶ CELA will be urging the federal government to follow the recommendation of the independent expert panel, and to remove the CNSC and the NEB from their roles in conduct of EA; rather the EAs should be conducted by an independent agency as recommended by the Panel.

# Nuclear waste projects and public involvement

- ▶ We have current and recent examples of other current nuclear waste proposals and how well they have been going from the perspective of a sufficient process for public involvement
- ▶ In terms of high level fuel waste, credible public involvement is crucial due to the inter-generational issues at stake
- ▶ Reform of the CEAA 2012 must take account of the fact that such projects have not been viewed by the involved public as credible processes

# Current Intermediate and Low Level Waste Proposals - public involvement credibility issues

## ▶ DGR

- ▶ Bait and switch issues
- ▶ Closed door decision making
- ▶ Limited number of decision makers
- ▶ limited vision of community future (“need” for a large nuclear facility)
- ▶ Insufficient proof of “need”
- ▶ Insufficient consultation with whole community
- ▶ Extremely limited geographic scope
- ▶ Omission of transportation issues
- ▶ Omission of great lakes as study area
- ▶ Failure to consider real alternatives

# Current Intermediate and Low Level Waste Proposals (2)

- ▶ NSDF:
  - ▶ Confusion of business opportunities with actual waste management needs
  - ▶ Limited decision makers (internal govt and the private consortium)
  - ▶ Governance issues
  - ▶ Under CEAA 2012 - limited involvement of federal government / policy makers
  - ▶ Lack of a comprehensive nuclear waste framework (also true of DGR and NWMO)
  - ▶ Downplaying of significance
  - ▶ Major transparency issues
  - ▶ Lack of essential info reports while already in draft EIS comment stage
  - ▶ No “say” by local community other than as additional stakeholders

# Rolphton and Whiteshell (3)

- ▶ Very limited info provided or available so far
- ▶ Eg No contaminant pathways characterization
- ▶ Novel approach but under-stated significance in project description
- ▶ Over-influence of economic drivers
- ▶ Similar governance issues to NSDF
- ▶ No say by local governments (other than regular stakeholder comments)

# Case law

- ▶ Public involvement in matters pertaining to nuclear energy and waste are crucial: Justice Blenus Wright, 1994:

“The public probably owes a debt of gratitude to Energy Probe and its staff for the important role they have played and continue to play,

. . . in propounding on the question of nuclear safety and other energy-related issues by informing the public and, perhaps more importantly, challenging the positions of the public bodies responsible for energy issues, and particularly nuclear energy issues, and, in so challenging them, to keep them on their toes to make sure that what they are doing has a reasonable basis for it.” *Energy Probe v. Canada et al* 1994 CanLII 7247 (ON SC)

# IAEA guidance for consulting public on radioactive waste

- ▶ IAEA Guidance also provides some benchmarks against the current Canadian nuclear waste processes
- ▶ The IAEA Guide, [Policies and strategies for Radioactive Waste Management](#) (IAEA 2009) provides that a State should “indicate the State’s intention to inform the public about proposed plans for radioactive waste management, and to consult concerned parties and members of the public to aid in making related decisions.”

# IAEA Guidance

- ▶ Among the goals of the IAEA guidance is “To enhance public confidence in relation to the subject of spent fuel and radioactive waste management.”
- ▶ The IAEA Guide elaborates: “Public participation in decision making: Decisions which may have a potential health, social or environmental impact should be made in consultation with those who may be affected (the regional Aarhus Convention [6])”

# IAEA Guidance cont'd

- ▶ The proponents' and reactor operators' stake in public involvement is also implied in the guide as follows”

“10.7. PUBLIC SENSITIVITY Public attitudes and expectations in relation to the potential construction of radioactive waste management facilities should be understood and addressed. Experience in many countries has shown that transparency and openness by the developer in relation to plans that may affect local communities offer the best chance of success. An important aim should be to gain the confidence and good opinion of the local community [42]. These are important aspects to take into account when developing and implementing strategies for radioactive waste management.” (page 38 of the Guide)

- ▶ This accords with CELA's oft-repeated submissions in other contexts such as emergency planning, that without adequate public consultation, and meaningful input that has clearly made a difference in decision making, there will be no public credibility in the outcomes

# resources

- ▶ Canadian Environmental Law Association: [www.cela.ca](http://www.cela.ca)  
<http://www.cela.ca/collections/green-energy>
- ▶ Northwatch: <http://www.web.net/~nwatch/>
- ▶ Nuclear Waste Watch: <http://nuclearwastewatch.weebly.com/>
- ▶ Nuclear Waste Watch members and links: <http://nuclearwastewatch.weebly.com/links.html>
- ▶ Canadian Coalition for Nuclear Responsibility: <http://www.ccnr.org/>
- ▶ Greenpeace: <http://www.greenpeace.org/canada/en/home/>
- ▶ SOS Great Lakes: <http://www.sosgreatlakes.org/>
- ▶ Stop the Great lakes Nuclear Dump: <http://www.stopthegreatlakesnucleardump.com/>
- ▶ Durham Nuclear Awareness: <https://durhamnuclearawareness.com/>
- ▶ Nuclear Information and Resource Service <https://www.nirs.org/>



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CELA works to protect human health and our environment by seeking justice for those harmed by pollution and by working to change policies to prevent such problems in the first place. For almost 50 years, CELA has used legal tools to increase environmental protection and safeguard communities. As a **Legal Aid Clinic**, our top priority is to represent low-income individuals and communities and to speak out for those with less...

## Staff Blog

### Committee report recommends major reform of Parliament's control of toxic substances

Joseph Castrilli and Fe de Leon | 2 weeks 3 days ago

If the recommendations of a Parliamentary committee are adopted by the House of Commons, Canada will move closer to enshrining environmental rights, substituting safer alternatives, and strengthening protection of vulnerable populations in the regulation of

## CELA's Lawyer Referral List

### News and Events

Jun 26 2017

Citizens ask Auditor-General to probe origins of plan to create a giant mound of radioactive waste beside Ottawa River

Jun 22 2017