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November 13, 2018

**Re: CELA's Intervention for the *Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2017***

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The Canadian Environmental Law Association (CELA) provides the following submission in response to the Public Notice dated June 29, 2018 seeking comments on the *Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2017*, released October 12, 2018.<sup>1</sup>

### **Background and Expertise of the Intervenor**

CELA is a public interest law organization founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues.

CELA has particular expertise in the matters discussed below resulting from our involvement as a member of the multi-stakeholder National Pollutant Release Inventory (NPRI) Working Group, and our decades of extensive legal research and advocacy to protect and restore the Great Lakes watershed.<sup>2</sup>

As CELA raised in its joint submission with Northwatch in last year's *Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities*,<sup>3</sup>

Radionuclides are not reported to Canada's National Pollutant Release Inventory (NPRI). The NPRI is an online data portal and a key resource for identifying pollution prevention priorities, supporting the assessment and risk management of chemicals, and encouraging actions aimed at reducing pollutant releases. The NPRI is covered under sections 46 – 53 of the *Canadian*

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<sup>1</sup> CNSC, "*Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2017*," online: <http://nuclearsafety.gc.ca/eng/the-commission/meetings/cmd/pdf/CMD18/CMD18-M48.pdf> [Uranium Mines ROR]

<sup>2</sup> Canadian Environmental Law Association, "Water Sustainability – Collection," online: <http://www.cela.ca/collections/water>

<sup>3</sup> CELA, "Review of CNSC's Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2016" (20 Nov 2016), online: <http://www.cela.ca/ReviewOfCNSCregulatoryOversiteReport>

*Environmental Protection Act, 1999.* The legislation enables the NPRI to track pollution using a listing approach and categorize substances by threshold. As radioactive substances are not part of the substance list, Northwatch recommends the CNSC support their inclusion in the NPRI's substance list, and advance the public's right to know.

In response, during the *Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities* meeting in December 2017, CNSC Staff committed:

For next year in the regulatory oversight reports, ... we are going to put what the equivalent would be on the National Pollutant Registry Index, which should be the total quantity released in a year for nuclear substances. That will be appended to the regulatory oversight report in next year's report.<sup>4</sup>

As noted in this year's *Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2017*:

In response to a public request to add radionuclides to the National Pollutant Release Inventory (NPRI) substance list, this information has been made available and is provided in appendix K: Annual Releases of Radionuclides to the Environment.<sup>5</sup>

CELA's recommendations to the Commission, set out below, are in response to this announcement and the data provided in Appendix K "Annual Release of Radionuclides to the Environment." Based on our analysis, the information in Appendix K is not available in a quickly, easily accessible and neutral form, and thus, not equivalent to how it would be presented on the NPRI site. Furthermore, with respect to community "right to know," the public should be able to access both currently listed NPRI substances and radionuclides at one location.<sup>6</sup>

## **1. Releasing radionuclide data in an ROR is not equivalent to reporting under the NPRI**

Radioactive substances are not among the substances which must be publicly reported and thus, CELA has on numerous occasions before the CNSC recommended that the CNSC support their inclusion in the NPRI's substance list. A three-page text insert in this ROR is not a sufficient stand in for their inclusion on the NPRI. Therefore, our recommendation from last year that radionuclides be reported to the NPRI, remains outstanding.

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<sup>4</sup> CNSC, Meeting Transcript, (13 December 2017) online : <http://www.nuclearsafety.gc.ca/eng/the-commission/pdf/Transcript-of-CommissionMeeting-December13,2017.pdf>, p 119

<sup>5</sup> Uranium Mines ROR, *supra* note 1, p 10

<sup>6</sup> See CELA, "Environmental Groups' Response to Environment and Climate Change Canada's and the Canadian Nuclear Safety Commission's decision to reject without consultation the ENGO Proposal to Add Radionuclides to the National Pollutant Release Inventory" (22 Jan 2018) online: <http://www.cela.ca/NGOSubmissionOnRadionuclides>

Canada continues to lack consistent comprehensive data on the releases of radionuclides from facilities around the Great Lakes Basin. Neither Canada's NPRI nor the U.S. Toxics Release Inventory (TRI) includes radionuclides as substances that polluters must report annually to the government and the public.

To this end, in March of 2016 CELA was also among the 110 advocacy groups that submitted an application under the binational *Great Lakes Water Quality Agreement* (GLWQA) to designate radionuclides as "Chemicals of Mutual Concern" (CMCs) under Annex 3 of that Agreement.<sup>7</sup> As the *GLWQA* recognizes that knowledge and information about chemicals of mutual concern is fundamental to the management of chemicals in the Great Lakes basin, we recommended the designation of radionuclides as a CMC, due the existing lack of lack of consistent and comprehensive data on radionuclide releases.

The NPRI would assist in remediating this gap, not only because it is an existing online, data portal and a key resource for identifying pollution prevention priorities, but because it supports the assessment and risk management of chemicals, and encourages actions aimed at reducing pollutant releases.

Unlike Appendix K, which is a 3-page text insert in this year's ROR, the NPRI construes data in a number of forms, thus allowing the data to be presented according to the user's preference. For instance, members of the public can search the NPRI by postal code, facility name or substance. The data can be viewed by year or, as a five-year aggregate, providing the user with the ability to choose their preferred level of detail. The data presented in Appendix K lacks all of these features and cannot be considered analogous.

Appendix K should list each of the categories, as included in the NPRI, documenting releases from off-site transfers for disposal and recycling, on-site releases, and on-site disposal. Each of these categories would be further defined by releases to air, land and water (see Image 1 excerpted below).

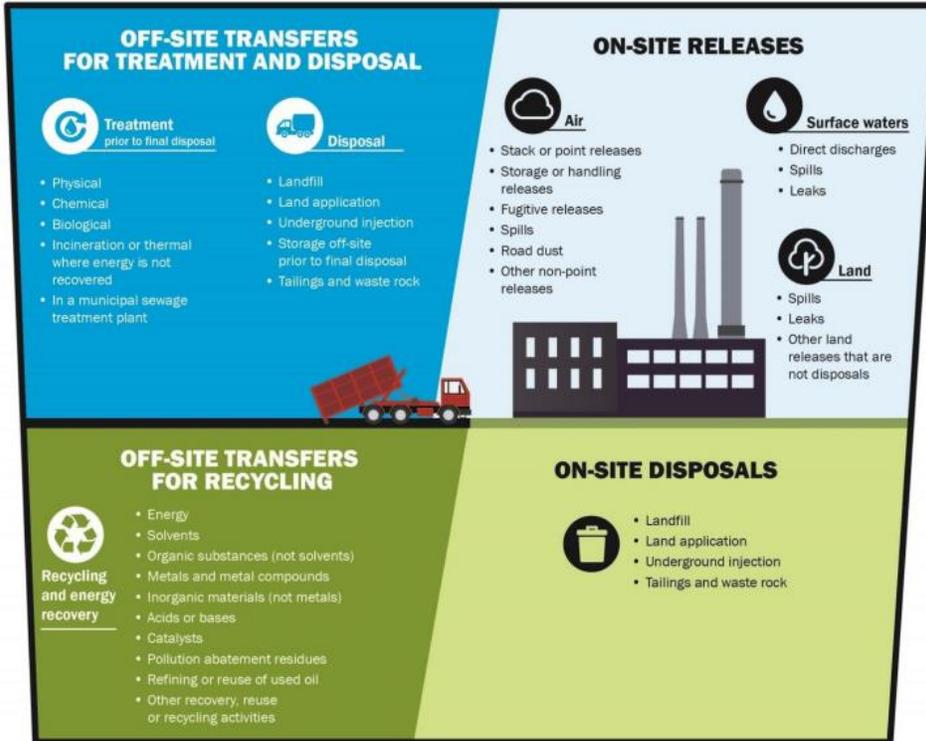
Appendix K1, which is specific to Saskatchewan, only reports on release to surface waters. It fails to reference releases to air or to land or the other NPRI categories. Therefore, the public is unable to know and distinguish between (1) there being no release and (2) a release, but unreported.

Likewise, Appendix K2 only reports the effluent from the waste management facilities in Elliot Lake, Ontario. Similar to Appendix K1, there is no reference to the other NPRI categories. This is particularly significant given the numerous places in the area where these wastes are stored and the need to track discharges.

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<sup>7</sup> See, CELA, "Radionuclides as Chemical of Mutual Concern in the Great Lakes Basin" (February 2016), online: <http://www.cela.ca/publications/radionuclides-chemical-mutual-concern-great-lakes-basin>

Image 1: Categories Reportable to the NPRI



Source: Environment and Climate Change Canada, “Guide for Reporting to the NPRI”<sup>8</sup>

## 2. Reporting radionuclide data to the NPRI would further Goal 7 of the CNSC’s strategic *Planning Framework*

The inclusion of radionuclides on the NPRI would support Goal 7 of the CNSC’s Strategic Planning Framework, excerpted below:

Goal 7 of the CNSC’s strategic Planning Framework is for the Commission to collect, generate and disseminate objective scientific technical and regulatory information using modern and accessible media.

7.2 is to increase the amount of credible and understandable scientific information made available to the public.

7.2.1 – Identify measures to encourage staff to generate credible and understandable public information materials.

7.2.2 – Develop strategy to make licensee data, such as environmental releases etc., available through open source; determine what data should be made available; develop process to ensure information is contextualized.<sup>9</sup>

<sup>8</sup> Online: <https://www.ec.gc.ca/inrp-npri/28C24172-53CB-4307-8720-CB91EE2A6069/2016-17%20Guide%20for%20Reporting%20-%20EN.pdf>

<sup>9</sup> CNSC, E-DOCS-5628339-v1-Presentation (11 Sept 2018)

The data as presented in Appendix K of the ROR does not fulfill this strategic goal. Unless a member of the public specifically reviews this ROR and knows to look for this data, its inclusion and availability would not be known.

Furthermore, lacking the searchability and display functions of the NPRI, Appendix K is not “modern and accessible” (per Goal 7) nor open sourced (per Goal 7.2.2). This goal could be easily accomplished by including radionuclide emissions and transfer data to the NPRI, as it is not only a well-established online reporting portal, but a “one stop” online resource for viewing pollutant emissions.

### **3. Reporting radionuclide data to the NPRI would further the public’s “right to know”**

Appendix K is inadequate in upholding an effective “right to know” framework. As summarized below, a public “right to know” increases transparency and accountability of decision-makers and can also serve as a motivator for action:

1. **Transparency** - By disclosing information on emission releases, governments, the public and other stakeholders can view types, quantities and the nature of emissions from facilities or industrial sectors.
2. **Accountability** - The transparency of decisions encourages and enhances accountability of decision-makers, serving as a check on government, industry and other entities by using transparency to achieve greater accountability. Increasing the accessibility of high-quality information raises public expectations of sound policy and practice in the fields of public health and environmental protection.
3. **Motivator for Action** - Information that reveals problems or lack of action motivates people to act and helps define public priorities. For example, a trend analysis of pollutant release data may reveal that while progress is being made in one industrial sector, another industrial sector is lagging and hence requiring more attention. Similarly, a community may not have been aware that a particular facility in the neighbourhood is storing, using or processing toxic substances in a manner or quantity that community considers imprudent. Hence, the availability of this information may assist to mobilize the community to respond to a change with respect to the environmental approvals for that facility.

Environmental reporting is a crucial feature of a public right to know and CELA recommends the CNSC recommend the inclusions of radionuclides on the NPRI, to directly further this goal. Rather than including a three-page insert in the ROR, we recommend adopting the NPRI’s reporting requirements and referencing this data, where appropriate, in the ROR.

## **CONCLUSION**

Given the threat posed to human health and the environment, we respectfully reiterate our recommendation that CNSC support the inclusion of radionuclides in the NPRI's substance list and advance the public's right to know. Appendix K does not suffice in fulfilling this goal – it is neither online, searchable nor part of a larger data repository that allows the public to view facility-wide or geographically specific pollutant releases. Furthermore, since radionuclides are not reported to the NPRI, it is impossible to obtain an overview of the extent of releases of radionuclides, cumulatively.

CELA has provided comments on the ROR reviewing nuclear power plants in Canada and the ROR for uranium and nuclear substance facilities, and similar data is not appended to these reports. This piecemeal approach, coupled with the lack of radionuclide data on the NPRI, makes it impossible to reasonably assess radionuclides emissions resulting from the nuclear sector. The data, as presented in Appendix K, does not mitigate this gap.

We encourage the CNSC to demonstrate a willingness to facilitate open and public data, given repeated requests from intervenors during CNSC hearings and meetings. The lack of comprehensive, accessible publicly-available data minimizes the ability of the public and independent scientific experts to provide valuable insight on relevant considerations to support the decision-making process.

Truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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