

**SUBMISSION BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION AND
GREENPEACE CANADA TO THE GOVERNMENT OF CANADA REGARDING
THE DRAFT FEDERAL SUSTAINABLE DEVELOPMENT STRATEGY (2019-2022)**

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**Prepared by
Kerrie Blaise, Legal Counsel
Shawn-Patrick Stensil, Senior Energy Analyst**

I. INTRODUCTION

This is the submission of the Canadian Environmental Law Association (“CELA”), jointly with Greenpeace Canada (“Greenpeace”) in relation to the Government of Canada’s draft 2019-2022 Federal Sustainable Development Strategy (“Strategy”).¹

Among the thirteen goals of the Strategy is the proposal that renewable and other clean energy technologies be scaled up in order to reduce emissions. In our view, the inclusion of nuclear as a source of clean energy and the Strategy’s support of exploring small modular reactors (SMRs) is inconsistent with the basic principle of sustainable development, as set out in the *Federal Sustainable Development Act* (“Act”), and its requirement that the Strategy be based on the precautionary principle.² We submit that including nuclear energy within the framing of clean energy is also contrary to the principles of sustainable development, namely the polluter-pays principle and intergenerational equity.

As detailed below, CELA and Greenpeace recommend the following:

- Nuclear energy be removed from the Strategy's definition of 'clean energy';
- The recommendation that SMR potential be explored be removed from the Strategy;
- The inclusion of nuclear energy within the Strategy be contingent upon nuclear projects, including proposals to build SMRs, being subject to federal environmental assessment law;
- The polluter-pays principle be applied throughout the Strategy;

¹ Environment and Climate Change Canada, “Federal Sustainable Development Strategy,” (2018) online: <http://www.fsds-sfdd.ca/index.html#/en/goals/> (“Sustainable Development Strategy”)

² *Federal Sustainable Development Act*, SC 2008, c 33, s 9(1)

- The Strategy recommend that the next five-year review of the *Nuclear Liability and Control Act* include consideration of sustainable development principles, including the removal of liability protection for reactor operators and suppliers; and
- Only actions which are likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably be advanced in the Strategy.

II. BACKGROUND

i. Canadian Environmental Law Association

CELA is a public interest law group 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 been actively engaged in the review of the proposed *Impact Assessment Act* (IAA), and has participated in various administrative and legal proceedings under CEAA 2012 and its predecessors, CEAA 1992 and the Environmental Assessment and Review Process Guidelines Order.³

ii. Greenpeace

Founded in Canada in 1971, Greenpeace is an independent campaigning organization, which uses peaceful and creative forms of direct action to expose global environmental problems, and ensure the ability of the Earth to nurture life in all its diversity. There are now 27 independent Greenpeace organizations in over 55 countries as well as a co-ordinating body: Greenpeace International. To maintain its independence, Greenpeace does not accept funding from corporations or government. Greenpeace Canada has also actively participated in the development of the *Impact Assessment Act*.

III. RECOMMENDATIONS FOR THE STRATEGY

The Strategy sets out the planning and reporting priorities, goals and targets necessary to achieve sustainable development, as set out in the *Federal Sustainable Development Act*. The Act provides the following description of the basic principle of sustainable development:

The Government of Canada accepts the basic principle that sustainable development is based on an ecologically efficient use of natural, social and economic resources and acknowledges the need to integrate environmental, economic and social factors in the making of all decisions by government.

³ See CELA's collection related to environmental assessment legislation and law reform: <https://www.cela.ca/collections/justice/canadian-environmental-assessment-act>

What is presently unclear, is whether the Strategy weighed environmental, economic and social factors when deciding upon the goals and action plans. For instance, there is a lack of analysis and reasoning describing how potential negative environmental and socio-economic factors were considered in the Strategy, and as detailed below, to what extent the precautionary principle and intergenerational equity were expressly considered.

The Strategy also includes a Glossary of Terms which, among its definitions, states clean energy as “renewable, nuclear, and carbon capture and storage technologies, as well as demand reduction through energy efficiency.”⁴ Therefore, nuclear energy can be read-in to all uses of the phrase “clean energy” in the Strategy. The Strategy also specifically states that in order to scale up clean energy technology, it will “explore the potential for small modular reactors - a type of nuclear fissions reactor - to provide safe, reliable and clean energy in the future.”⁵

We do not agree with the Strategy’s framing of nuclear energy as clean energy. As explained below, the Strategy has assumed nuclear energy to be sustainable without reason, and more importantly, evidence, that nuclear energy and potential SMR applications are in-line with the fundamental principles of sustainable development.

RECOMMENDATION NO.1 We request nuclear energy be removed from the definition of clean energy and the recommendation that SMR potential be explored, removed from the draft Strategy.

i. Precautionary environmental planning requires nuclear energy projects be subject to credible, sustainability-based assessments

The Strategy recognizes that conducting thorough and robust environmental assessments (EA) supports progress in all areas of sustainable development. Indeed, EAs are a recognized means of achieving sustainable development and fostering sustainability is a recognized statutory purpose of Canada’s federal EA law. In order to determine whether nuclear energy and applications such as SMRs align with Canada’s sustainable development, the Strategy should require that these projects be subject to impact assessments under the proposed *Impact Assessment Act*.

The vision for SMRs in Canada was set out in the Canadian Nuclear Association’s report from November 2018, “A Call to Action: A Canadian Roadmap for Small Modular Reactors.”⁶ With funding from the federal government’s Department of Natural Resources Canada, the SMR Roadmap describes how untested, yet-to-be-developed SMR technology can serve as a source of safe, clean, affordable energy. Of critical relevance to the Strategy, is the Roadmap’s recommendation that SMRs be exempt from EA, noting that EA is an “impediment” and “risk to the future of SMR deployment in Canada”.⁷

⁴ Sustainable Development Strategy, p 113

⁵ Sustainable Development Strategy, p 46

⁶ Canadian Small Modular Reactor Roadmap Steering Committee (2018) A Call to Action: A Canadian Roadmap for Small Modular Reactors, Ottawa, Canada, p 9.

⁷ The CNSC has publicly recognized that they do not consider socioeconomic aspects in their review of projects, see Canadian Nuclear Safety Commission (2018) Transcript of Proceeding dated 28 June 2018.; see also: “Erroneous message from Canada’s nuclear regulator could allow nuclear energy projects to escape federal environmental

As we have repeatedly noted, should nuclear energy projects, like SMRs be exempt from the IA review, there would be no legislative basis requiring that their contribution to, promotion of, or harm to sustainability be examined.⁸ The licensing of nuclear activities conducted by the Canadian Nuclear Safety Commission is neither duplicative of the federal EA process nor a sufficient alternative to an assessment, notably because the CNSC's regulatory mandate and its governing statute, the *Nuclear Safety and Control Act*, does not require that a project's contribution to sustainability or its socio-economic effects be assessed. While these are mandatory considerations under both the *Canadian Environmental Assessment Act, 2012*, and the proposed *IAA*, they are not considerations required by the *NSCA* and by extension, the CNSC's licensing process.

The Strategy frames its support for nuclear energy on the basis that SMRs may reduce emissions. We do not support framing the sustainability of an undertaking on a project's purported capacity to solely reduce greenhouse gas emissions, and instead recommend the full range of sustainability principles be assessed.⁹ Without a commitment by the federal government that nuclear projects, including SMRs, will be subject to the proposed *IAA*, we do not support the inclusion of nuclear energy within the Strategy's vision.

The operation of nuclear power plants, their ultimate decommissioning, and long-term storage of radioactive waste poses serious intergenerational environmental and social impacts.¹⁰ Absent a sustainability assessment of nuclear energy projects, the Strategy's support for nuclear energy and its alignment with principles of sustainable development is premature and based on alleged, rather than proven social, ecological and human health benefits. In our view, without expressly requiring SMRs be subject to EA prior to including them in the Strategy is contrary to sound, precautionary environmental planning.

RECOMMENDATION NO. 2: The inclusion of nuclear energy within the Strategy should require the accompanying commitment that nuclear projects, including but not limited to all new reactor projects such as proposals to build experimental SMRs, be subject to federal environmental assessment law.

ii. The polluter-pays principle should be applied to the Strategy, generally

The polluter-pays principle is another fundamental principle of sustainable development which places the onus on the party responsible for causing harm for the cost of its management, and prevention of adverse impacts towards humans and the environment. While the polluter-pays principle is mentioned in the Strategy's discussion of marine shipping and accountability for spills, it is not referenced in the context of nuclear energy. This omission must be remedied in the subsequent version of the Strategy.

assessment," online: <http://www.cela.ca/blog/2018-12-07/erroneous-CNSC-message-could-allow-nuke-projects-escape-EA>

⁸ See for instance CELA's submission to the Standing Senate Committee on Energy, the Environment and Natural Resources (29 March 2019): <https://www.cela.ca/C-69-impact-assessment-act>

⁹ CELA, "Submission regarding *Discussion Paper - Developing a Strategic Assessment of Climate Change*" (31 August 2018), <http://www.cela.ca/CommentsOnClimateChangeStrategicImpactAssessment>

¹⁰ Gibson et al (2008), *An Analysis of the Ontario Power Authority's Consideration of Environmental Sustainability in Electricity System Planning*

Additionally, as the polluter-pays principle is an economic rule of cost allocation requiring that the entity which creates a pollutant be responsible for external costs arising from its effects, the long-term management of radioactive waste should be expressly considered in the Strategy. However, Canada's nuclear industry benefits from accident liability protection provided by the *Nuclear Liability and Compensation Act* ("NLCA"), which transfers the responsibility for compensating victims for damage or clean-up from the nuclear industry to Canadians.¹¹

Applying a sustainability lens demonstrates that transferring the risk of accidents of reactor operations from operators and suppliers to Canadians is contrary to the polluter-pays principle and by extension, the Strategy's support for exploring the potential of SMRs as a source of clean energy. Therefore, the Strategy's support for pronouncements of SMR safety and reliability should be reconsidered in light of a liability scheme which contravenes the polluter-pays principle.

In order to further align Canada's sustainable development goals with the existing nuclear liability scheme, consideration of sustainable development principles should be included within the Strategy's support for sustainability-based decision making. For instance, per section 26(1) of the *NLCA*, the Minister must review the limit of liability at least once every five years. As part of this review, the Strategy should include a recommendation that the *NLCA* review seek to align Canada's nuclear liability scheme with sustainability principles. As the Act was last reviewed in 2015, the next five-year review will occur within the Strategy's timeframe which spans 2019-2022.

RECOMMENDATION NO. 3: The Strategy should recommend that the next five-year review of the *Nuclear Liability and Control Act* include consideration of sustainable development principles, including removal of liability protection for reactor operators and suppliers.

iii. The Strategy should only support actions which are likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably

The Strategy states its vision reflects the principle of intergenerational equity. The Act defines intergenerational equity as "the principle that it is important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs."¹² We support the inclusion of this principle, as a key principle of sustainability.

However, the Strategy has failed to consider the intractable problem that nuclear energy use is accompanied by a transference of risk and burden to future generations. This is an egregious oversight of the Strategy which must be remedied in the subsequent Strategy. As previous sustainability-based assessments of nuclear energy have identified, the use of nuclear power for power generation poses uniquely severe accident, security and weapons proliferations risks.¹³ Applying an intergenerational equity lens to nuclear projects also reveals risk of proliferations on future generations, because of nuclear power generation's waste legacy.¹⁴

¹¹ *Nuclear Liability and Compensation Act*, SC 2015, c 4 s 120

¹² *Supra* note 2, s5(b)

¹³ *Supra* note 10

¹⁴ *Ibid.*

RECOMMENDATION 4: Only actions which are likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably should be advanced in the Strategy.¹⁵ The inclusion of nuclear energy, absent a review of its intergenerational effects does not further the Strategy's purpose of advancing sustainable development.

IV. CONCLUSION

Arising from the foregoing submissions, CELA and Greenpeace recommend that:

- Nuclear energy be removed from the Strategy's definition of 'clean energy';
- The recommendation that SMR potential be explored be removed from the Strategy;
- The inclusion of nuclear energy within the Strategy be contingent upon nuclear projects, including proposals to build SMRs, being subject to federal environmental assessment law;
- The polluter-pays principle be applied throughout the Strategy;
- The Strategy recommend that the next five-year review of the *Nuclear Liability and Control Act* include consideration of sustainable development principles, including the removal of liability protection for reactor operators and suppliers; and
- Only actions which are likely to preserve or enhance the opportunities and capabilities of future generations to live sustainably be advanced in the Strategy.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Kerrie Blaise, Legal Counsel

GREENPEACE CANADA



Shawn-Patrick Stensil, Senior Energy Analyst

¹⁵ Gibson, R.B. (2012). In full retreat: The Canadian government's new EA law undoes decades of progress. *Impact Assessment and Project Appraisal*, 30(3), 179-188; Gibson, R.B. (2017). (Ed.). *Sustainability Assessment: Applications and Opportunities*. London, New York: Routledge