

Decommissioning of CNL's Whiteshell Laboratories CNSC Licence Renewal (Ref. 2019-H-03)

Oral Submission of the
Canadian Environmental Law Association

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An Introduction to CELA

Interest and Expertise

- Founded in 1970s; non-profit, public interest organization that advocates for the protection of human health, safety and the environment
- Specialty clinic funded by Legal Aid Ontario to provide equitable access to justice
- Engage in litigation and law reform to advocate for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality

Summary of Findings

1. Discrepancies in scope of licence
2. Proponent lacks final safety assessment for numerous low level waste trenches
3. Proponent contemplates undertaking activities which may require an impact assessment under the *Impact Assessment Act*
4. Proponent has not sufficiently aligned plans with CNSC and international decommissioning guidance
5. Granting a ten-year licence reduces public engagement, access to information and is contrary to the precautionary principle

1. Discrepancies within Licensing Documents

Amendments to Licence and LCH

CNSC Staff CMD	CNL CMD
The matter before the Commission in this CMD <u>does not</u> include in situ decommissioning (ISD) of the WR-1 reactor (p 1)	At the end of the proposed ten year licensing period, the CNL plan is that all of WL will have been decommissioned to its final end-state, <u>including</u> the final decommissioning of the WR-1 reactor (p ii)

RECOMMENDATION NO. 2: The Licence must be revised to exclude the Whiteshell reactor from its scope. It also must be made a requirement of licensing that upon the release of the federal EA decision, the Licence be reopened for review accompanied by a full public hearing, with adequate public notice, & interventions.

2. Safety assessment is a prerequisite to licensing *Per Class I Nuclear Facilities Regulations*

- CNL proposes 21 of the 25 Low Level Waste (LLW) trenches should be left *in situ*, pending a final safety assessment. Final safety assessment to be developed and presented to the CNSC for acceptance during the next licensing period
- Proposal contrary to *Class I Nuclear Facilities Regulations* which requires safety analysis report as a requirement of licensing

RECOMMENDATION NO. 3: Preamble to draft Licence Condition 4.1 should be updated to state a final safety assessment for the LLW trenches has not be approved. Licence should exclude trenches from scope, pending completion of safety assessment; date for submission of a safety assessment should be set out.

3. CNL's proposed activities may require IA Per *Impact Assessment Act*

- *Impact Assessment Act* (IAA) received Royal Assent on June 21, 2019 - proclaimed into force as of August 28, 2019.
- CNL's proposed *in situ* decommissioning of 25 underground Low Level Waste trenches constitutes the disposal of nuclear waste and thus a physical activity requiring an IA under the *IAA*.

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

- *IAA* prohibits proceeding with a designated project absent compliance with Act's requirements/approval of IA

3. CNL's proposed activities may require IA Per *Impact Assessment Act* (cont.)

RECOMMENDATION NO. 4: The CNSC should opine on the issue of whether the *in situ* decommissioning of the 25 LLW trenches constitutes a “Physical Activity” per s 28(b) of the *Physical Activities Regulations*, and thus requires an impact assessment.

RECOMMENDATION NO. 5: CELA requests the CNSC contact the newly formed Impact Assessment Agency of Canada for clarification and advice as to whether the proponent needs to file an initial project description to trigger the *IAA* process

4. Insufficient Decommissioning Documents

Per CNSC Regulatory Guidance

- Crucial that the CNSC have baseline regulatory guidance and oversight for decommissioning in place *prior* to conducting decommissioning licensing hearings
 - Lag between CNSC regulations and proposed undertaking
 - Lack of clarity in process, including future licensing
 - Inability to validate proposed activities against regulatory framework

RECOMMENDATIONS 7 - 9: Decommissioning strategies should be clarified and set out in primary licensing documents. Licensee should update Detailed Decommissioning Plan to ensure compliance with G-219 and draft RegDoc 2.11.2.

4. Insufficient Decommissioning Documents

Per IAEA Standards

- CNCS references CNL will submit a post-decommissioning or 'end-state' report
- IAEA's GSR Part 6 requires public input prior to authorization for decommissioning termination:

On the completion of decommissioning actions, the licensee shall demonstrate that the end state criteria as specified in the final decommissioning plan ... Inputs from the public shall be addressed before authorization for decommissioning is terminated.

RECOMMENDATION NO. 10: Include a requirement for public input within review of post decommissioning activities to ensure alignment with international standards.

4. Insufficient Decommissioning Documents

Public Disclosure

- Licence Condition G.4 should specify that all plans related to Whiteshell decommissioning activities be publicly available and posted online.
 - Only the licensee's licence application and CMD are posted online
- CSA standards heavily relied upon in Licence and CMDs. Due to copyright, cannot be shared nor reproduced without permission.

RECOMMENDATION NO. 11, 12: Require public input within review of post decommissioning activities; cease reliance on CSA standards and instead conduct all standard setting and guidance within the CNSC processes per *Nuclear Safety and Control Act*

4. Insufficient Decommissioning Documents

Prescribed Timelines

- Draft RegDoc 2.11.2 stipulates revisions to the DDP shall occur every 5 years for deferred decommissioning activities
 - Unclear to what extent this applies - CNL should be required to more clearly articulate which of its decommissioning activities are “deferred” and the CNSC confirm whether 5-year review applies
- Draft Licence Condition G.3 states “financial guarantee for decommissioning is to be reviewed and revised by the licensee every 5 years, or; when required by the Commission”

RECOMMENDATION NO. 13: Update G.3 to read “the financial guarantee for decommissioning shall be reviewed and revised by the licensee within a period not exceeding 5 years, or; at a time less than five years when required by the Commission.”

Order Requested

Prematurity of Licence Request

- CNL's request for 10-year licence is premature
- Per CNSC's 2018 Whiteshell licensing decision, 1-yr merited due to:
 - Ongoing federal environmental assessment
 - High volume of outstanding interrogatories & need for time to address all comments
- CNL has not demonstrated why in these circumstances a ten-year licence is appropriate when absent any material change, a one-year extension was sufficient in 2018

CNSC should follow its 2018 precedent and grant a licence extension for a period of one-year.

Order Requested

Encouraging Public Involvement & Right to Know

- CNSC's support for 10-year licences significantly reduces public scrutiny of licensee operations, access to information, and effectively eliminates meaningful public participation
- History of incidents, accidents and malfunctions at site not discernible - need for public archive to retain institutional and worker knowledge & inform closure plans
 - CNL references it will implement an Environmental Data Management System across CNL to consolidate historic and current environmental data

CNL's Environmental Data Management System should be publicly available to advance the public's right to know.

Order Requested

Alignment with the Precautionary Principle

- Granting a ten-year licence would be inconsistent with the international law principle, the precautionary principle

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241 at paras 30 – 32)

In circumstances of potentially serious or irreversible environmental harm, the CNSC must only licence decommissioning activities which prioritize environmental protection, and human health and safety.

Order Requested

Approve CNL licence renewal application for a period of one year after enhancing the licence and licence conditions handbook for the foregoing reasons.

In the alternative, extend the current licence for a period of one-year.

Per the Canadian Environmental Law Association and supported by the Concerned Citizens of Manitoba



For more information:

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