

Canadian Nuclear Safety Commission-Guidelines for Environmental Assessment pursuant to the requirements of the *Canadian Environmental Assessment Act*

Revision 2 – December 2004

Background

As the regulator of the Canadian nuclear industry, the Canadian Nuclear Safety Commission (CNSC) continually strives to be an effective regulator while operating in an open and transparent fashion. After consultation with various internal and external stakeholders, the CNSC has identified a number of ways to improve the effectiveness and efficiency of meeting the requirements of the *Canadian Environmental Assessment Act* (CEAA).

At the June 25th 2003 meeting of the Commission, staff presented CMD 03-M43 which described several recommendations on how the CNSC program could be improved. The Commission accepted those recommendations and, as a result, the CNSC's environmental assessment (EA) process has been modified. The revised and clarified process is described below.

1. Approval of Environmental Assessment (EA) Guidelines

In general, designated CNSC staff will establish the EA Guidelines for screening and comprehensive study EAs, including the making of decisions on the *scope of project* and *scope of assessment* pursuant to sections 15 and 16 of the CEAA. Exceptions can occur when the criteria set out in Appendix A apply. In these cases, the Commission (i.e., the tribunal component of the CNSC) will establish the EA Guidelines.

The Designated CNSC staff positions for this purpose include: the applicable Licensing Designated Officers and Directors General, and/or the Executive Vice-President of the Operations Branch.

The process for the approval of a screening type environmental assessment is described in Figure 1.

2. EA Guidelines

The EA Guidelines for a project will include the following three key elements:

- the scope of the project;
- factors to be considered in the EA; and
- the scope of those factors.

The EA Guidelines will be based on a standard format that includes generic requirements for all EAs. The standard EA Guideline format, however, is flexible and makes provisions for including project specific information. The standard EA Guideline “template” will be periodically updated and is available on the CNSC website at www.nuclearsafety.gc.ca (Appendix B).

3. Public Consultation

With respect to public consultation during EAs, the CNSC EA Program includes a consultation framework that is consistent with the CNSC’s public consultation and risk management practices. The CNSC’s approach meets the requirements of CEAA, and fulfills the CNSC’s goal of transparency and openness in decision-making.

3.1 Framework for Public Consultation

The consultation framework provides for appropriate public involvement at the key steps in an EA process. At the initiation of each EA project, CNSC staff will establish a specific public consultation plan based on the criteria identified in Appendix C. The plan will identify the appropriate public consultation activities at each of the key steps of the EA project. During the course of an EA, the public consultation plan will be periodically reviewed against the criteria to ensure evolving needs are addressed and that there is a full exchange of relevant information.

3.2 Public Consultation on EA Guidelines

When the Commission is responsible for approving the EA Guidelines and the Commission is the lead or only Responsible Authority under the CEAA for the EA, CNSC staff will prepare a draft of the EA Guidelines for public review. The results of the public review will be reported to the Commission prior to the Commission considering the final EA Guidelines at a one day public hearing or Commission meeting.

When the Commission is responsible for approving the EA Guidelines, and the Commission is not the lead Responsible Authority under the CEAA for the EA, CNSC staff would report on the results of any public review that has been coordinated by the lead Responsible Authority when the Commission considers the EA Guidelines at a Commission meeting.

In cases where a CNSC staff Designated Officer will approve the EA Guidelines, a formal public review and/or public hearing on the draft EA Guidelines will normally not be carried out. The Designated Officer will have the discretion to consult with the public on the EA Guidelines where he/she considers it would be in the public interest to do so. However, as noted above, and elaborated further below, all EA Guidelines will include the appropriate public consultation plan based on the criteria identified in Appendix C [or sec. 9.2.8 of Appendix B].

3.3 Public Consultation During the Conduct of an EA and Preparation of EA Reports

Consistent with Section 17 of the CEAA, CNSC staff will direct the project proponent to implement appropriate public consultation activities throughout the conduct of an EA. The requirements for public consultation will be specified in the EA Guidelines and will reflect the criteria set out in Appendix C. CNSC staff will monitor issues arising from these public consultation activities and will ensure that significant issues are brought to the attention of the Responsible Authority (i.e., the Commission or CNSC staff Designated Officer as the case may be).

When a draft EA Screening Report is to be considered by the Commission, CNSC staff will make the preliminary EA Screening Report available for public review and report to the Commission on the results of that review prior to the Commission's consideration and decision on the draft EA Screening Report. Given that the public would have had the opportunity to comment on the preliminary EA Screening Report prior to its consideration by the Commission, CNSC staff recommends that the Commission consider EA Screening Reports at one-day, rather than two-day public hearings as provided in the *CNSC Rules of Procedure*.

In the case of an EA Screening Report under consideration by a CNSC staff Designated Officer, the preliminary EA Screening Report will be made available for public review and the findings reported along with the draft EA Screening Report to the CNSC staff Designated Officer before a decision is rendered.

3.4 Summary of Consultation Framework

This framework for consultation would result in a tiered approach to public consultation.

- For projects where a CNSC staff Designated Officer is to make the decision on the EA Screening Report, CNSC staff, with reference to the criteria in Appendix C, will assess whether any public input on the draft EA Guidelines, and/or the preliminary EA Screening Report is warranted. If there is evidence of public interest or potential environmental issues, public input could be sought on the draft EA Guidelines and/or the preliminary EA Screening Report prior to decisions being made by the Designated Officer.
- For situations where both the EA Guidelines and the EA Screening Report are to be considered by the Commission, the public will have up to four separate opportunities for public consultation under CNSC processes. These opportunities for public consultation for an EA Screening Report would be:
 - CNSC staff-led public consultation on draft EA Guidelines.
 - Commission public hearing on CNSC staff's recommendations on the EA Guidelines.
 - CNSC staff-led public consultation on the preliminary EA Screening Report.

- Commission public hearing on the draft Screening Report and CNSC staff's recommendations.

4. Reporting to the Commission

Commencing in November 2004, CNSC staff will report annually to the Commission on CNSC activities and progress related to the conduct of EAs under the CEAA.

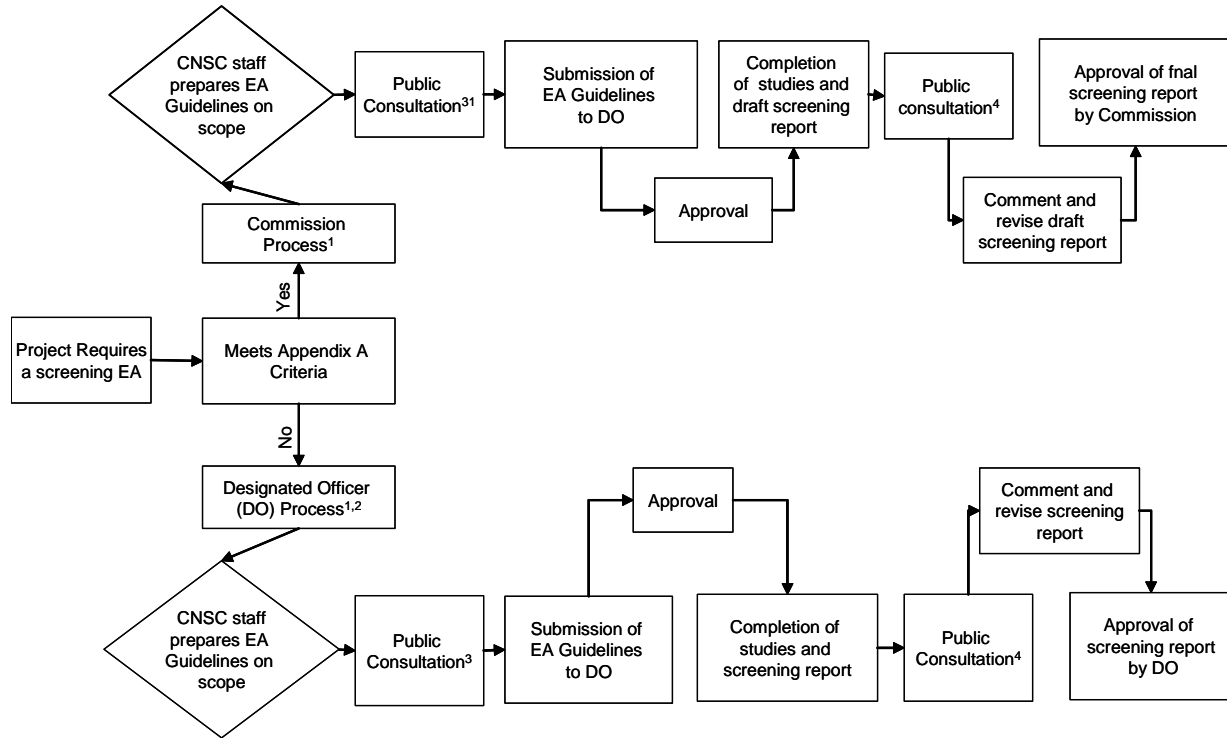
5. Role of the Processing Facilities and Technical Support Division (PFTSD)

As the group responsible for ensuring the CNSC's compliance with the CEAA, PFTSD staff has a direct role in all Screenings and Comprehensive Studies performed at the CNSC. The PFTSD is the primary contact between the CNSC and the Canadian Environmental Assessment Agency, and is responsible for ensuring that the federal coordination requirements as described in the CEAA and its regulations are fulfilled.

Initial determinations on whether projects are subject to an EA under the CEAA are conducted by PFTSD staff in consultation with Legal Services on a case by case basis. With the support of CNSC technical specialists and licensing staff, PFTSD staff is also responsible for preparing all EA documents that require the approval of either the Commission or a Designated Officer.

FIGURE 1

PROCESS FOR APPROVAL OF A SCREENING REPORT



¹Both the DO and the Commission processes require execution of the CEAA Federal Coordination Regulations and are subject to the requirements of the Canadian Environmental Assessment Registry
²The DO may bump the process to a Commission decision at any time, based on new information related to Appendix A Criteria
³Requirements for public consultation on EA Guidelines described in section 3(ii) of this document
⁴Public consultation is required on all preliminary screening reports

APPENDIX A

Factors and Criteria for Determining when a Designated Officer will not Exercise Authority to Approve EA Guidelines

Factors and Criteria
<p>1) <u>Public Issues/Concerns on Potential Project Risks:</u></p> <ul style="list-style-type: none">- High degree of public interest in the type of project;- High degree of public interest in the location of the project;- Moderate to strong likelihood of potentially adverse impact of the project on the local community;- Moderate to strong likelihood of potentially adverse impact of the licensing action/project on constitutionally protected aboriginal and treaty rights;- Substantial history of local public concerns, interest or involvement in the project.
<p>2) <u>Technological/Licensing Issues:</u></p> <ul style="list-style-type: none">- Moderate to high degree of licensing assessment issues associated with the project which involves substantially new technology;- Moderate to high degree of licensing assessment issues associated with the project which involves facility operating practices not commonly used or accepted by the CNSC for other similar facilities;- High degree of licensing assessment issues associated with the project which involves extensive modification of physical works or activities at an existing facility.
<p>3) <u>Environmental Risk Issues:</u></p> <ul style="list-style-type: none">- High degree of potential environmental risk is anticipated to be associated with the project;- Strong likelihood of potentially unmitigable impacts on known Valued Environmental Components (VECs);- High degree of uncertainty about the availability of environmental information needed to assess the potential effects of the project.
<p>4) <u>EA Process Issues:</u></p> <ul style="list-style-type: none">- High degree of controversy in defining the scope of project or scope of assessment factors;- CNSC staff request the Commission to consider referral of the project to the Minister of Environment, pursuant to section 25 or paragraph 21(b) of the CEAA;- Inadequate degree of public participation opportunities in a cooperative EA process in which the CNSC process is not the lead process.

APPENDIX B

DRAFT TEMPLATE

**Draft EA Guidelines
(Scope of Project and Assessment)**

Environmental Assessment of a Project Proposal

**Note: The Draft EA Guidelines
is available on the CNSC web site at:
<http://www.nuclearsafety.gc.ca/eng/assessments/>**

Prepared by the Canadian Nuclear Safety Commission

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APPENDIX C

Criteria for Public Consultation in EA Projects

Criteria to be considered by the CNSC staff when determining the extent of public consultation for specific projects include the following:

- (i) whether there is an existing or likely public interest in the type of project, the location of the project or the potential interactions of the project with the local community;
- (ii) whether the project is likely to be perceived by the public as having the potential to cause significant adverse environmental effects;
- (iii) the extent to which community knowledge or aboriginal traditional knowledge is likely to inform the EA;
- (iv) the degree of confidence about potential effects or the significance of identified or known effects that are of interest to the local community;
- (v) the degree to which the project is subject to other public participation processes of appropriate scope and coverage;
- (vi) whether a Commission public hearing process will provide opportunities for public interventions on the EA; and
- (vii) the applicability of CNSC policies and guidance on public consultation.