

Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant Rio Algom Limited

Subject Environmental Assessment Guidelines for the
Proposed Replacement of the Stanleigh Effluent
Treatment Facility

Date April 25, 2006

RECORD OF PROCEEDINGS

Applicant: Rio Algom Limited

Address/Location: PO Box 38, Elliot Lake, Ontario P5A 2J6

Purpose: Environmental Assessment Guidelines for the proposed replacement of the Stanleigh effluent treatment plant

Application received: N/A

Date(s) of hearing: March 30, 2006

Location: Canadian Nuclear Safety Commission (CNSC), 280 Slater St., 14th. Floor, Ottawa, Ontario

Member present: L.J. Keen, Chair
A.R. Graham
J.A. Dosman

Secretary: M.A. Leblanc
Recording Secretary: P.D. Bourgeau
General Counsel: J. Lavoie

Applicant Represented By	
<ul style="list-style-type: none">• M. Wiber, Vice President• D. Berthelot, Reclamation Manager	
CNSC staff	Document Number
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Date of Decision: March 30, 2006

Table of Contents

1. Introduction	1
2. Decision	2
3. Issues and Commission Findings	3
3.1 Type of Environmental Assessment Required	3
3.2 Process for Environmental Assessment Screening Report	4
3.3 The Scope of the Project	4
3.4 The Scope of the Assessment	5
4. Conclusion	6

Introduction

1. Rio Algom Limited (Rio Algom) informed the Canadian Nuclear Safety Commission (CNSC¹) of their intention to seek authorization to replace the existing water treatment plant located at the Stanleigh tailings management area with a new effluent treatment plant and settling pond. CNSC authorization of Rio Algom's request would require an amendment of the Waste Facility Operating Licence WFOL-W5-3101.02/indf.
2. Before the Commission would be able to make licensing decisions pursuant to the *Nuclear Safety and Control Act*² (NSCA) in respect of the proposed project, the Commission must, in accordance with the requirements of the *Canadian Environmental Assessment Act*³ (CEAA), make a decision on an environmental assessment (EA) of the proposal. The Commission is the sole responsible authority⁴ for the EA.
3. In carrying out this responsibility under the CEAA, the Commission must first determine the *scope of the project* and the *scope of the assessment*. To assist the Commission in this regard, CNSC staff prepared a draft Environmental Assessment Guidelines document (EA Guidelines) in consultation with other government departments, the public and other stakeholders. The draft EA Guidelines (*Environmental Assessment Guidelines (Scope of Project and Assessment) Replacement of the Stanleigh Effluent Treatment Facility*) contains statements of scope for the approval of the Commission. The draft EA Guidelines are attached as Appendix A to CNSC staff document CMD 06-H108.

Issues

4. In considering the EA Guidelines, the Commission was required to decide, pursuant to subsections 15(1) and 16(3) of the CEAA respectively:
 - a) the *scope of the project* for which the EA is to be conducted; and
 - b) the *scope of the factors* to be taken into consideration in the conduct of the EA.

¹ In this *Record of Proceedings*, the *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² S.C. 1997, c. 9

³ S.C. 1992, c.37

⁴ Responsible Authority in relation to an EA is determined in accordance with subsection 11(1) of the CEAA.

5. The Commission also considered whether it would, at this time, request the federal Minister of the Environment, pursuant to section 25 of the CEAA, to refer the project to a mediator or a review panel.
6. Furthermore, the Commission, in accordance with its internal EA process, undertook to decide whether or not the Commission's consideration of the completed EA Screening Report (Screening Report) would be by way of a public or closed hearing held by the Commission.

Hearing

7. The President of the Commission, pursuant to section 22 of the NSCA, established a Panel of the Commission to hear this matter.
8. In making its decision, the Commission considered information presented for a hearing held on March 30, 2006 in Ottawa, Ontario. The hearing was conducted in accordance with the Commission's process⁵ for determining matters under the CEAA, and Rule 3 of the *Canadian Nuclear Safety Commission Rules of Procedure*⁶. For the hearing, the Commission received a written submission from CNSC staff (CMD 06-H108). Rio Algom and CNSC staff were also available to answer questions from the Commission during the proceeding.

2. Decision

9. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*,

the Canadian Nuclear Safety Commission, pursuant to sections 15 and 16 of the CEAA, approves the *Environmental Assessment Guidelines (Scope of Project and Assessment) - Replacement of the Stanleigh Effluent Treatment Facility*, as presented in Appendix A attached to CMD 06-H108.

10. The Commission also decides that it will not, at this time, refer the project, pursuant to section 25 of the CEAA, to the federal Minister of the Environment for his referral

⁵ The Commission decided (ref. Minutes of Commission Meeting held on March 23, 2005) that, unless otherwise specified, the Commission will not hold public hearings in respect of its decisions on the scope of environmental assessments to be conducted pursuant to the CEAA. The CNSC staff process for engaging the public and other stakeholders in the preparation of the draft EA Guidelines for presentation to the Commission at a non-public hearing is normally sufficient at this early stage in the EA process.

⁶ SOR/2000-211

to a mediator or review panel. The Commission notes that it may make such a referral at any time during the course of the EA process if warranted.

11. Furthermore, at this time, the Commission is satisfied that the Commission's consideration of the Screening Report will not require a public hearing of the Commission. The Commission notes, however, that, depending on the findings and level of public concern that arise during the course of the EA, the Commission may choose to revisit this decision.

Issues and Commission Findings

Type of Environmental Assessment Required

Screening vs. Comprehensive Study, Review Panel or Mediation:

12. The project is not of a type identified in the *Comprehensive Study List Regulations*⁷. Therefore, pursuant to subsection 18(1) of the CEAA, the CNSC is required to ensure that a screening environmental assessment of the project is performed and a Screening Report is prepared.
13. Other available types of assessment under the CEAA are a review panel or mediation appointed by the federal Minister of the Environment. To initiate either of these alternative assessment processes, the Commission would have to refer the project to the Minister pursuant to section 25 of the CEAA. In this regard, CNSC staff stated in its CMD that CNSC staff is not aware at this time of any potential environmental effects or public concerns associated with this project which CNSC staff considers would warrant having the project referred to a mediator or review panel.
14. In support of this, CNSC staff noted that it has solicited comments from key stakeholders during the development of the EA Guidelines, including Northwatch, the City of Elliot Lake, the Serpent River Region Environmental Committee and individuals that had previously expressed an interest in activities conducted by Rio Algom in the Elliot Lake region. There were no comments received from the public.
15. CNSC staff also noted that the EA Guidelines were sent for review and comment to the Serpent River First Nations and both Federal (Natural Resources Canada, Health Canada, Fisheries and Oceans Canada and Environment Canada) and Provincial Authorities (Ministry of Environment, Ministry of Natural Resources, Ministry of Northern Development and Mines).
16. The Commission is satisfied that the public and other stakeholders have been adequately consulted during the preparation of the draft EA Guidelines. The Commission is also satisfied that, for the purpose of considering whether to refer the project to the Minister for a review panel or mediation, it had sufficient information

⁷ SOR/94-638

to assess the current level and nature of public concern about the project.

17. Based on information received, the Commission concludes that a Screening EA of the project is required pursuant to the CEAA. The Commission further decides that, at this time, it will not refer the project to the Minister of the Environment for mediation or a review panel. The Commission concurs with CNSC staff that the issues and concerns identified to date can be addressed in a screening-level assessment. However, because the Commission may make such a referral at any time, the Commission requests that CNSC staff inform the Commission in a timely manner of any significant issues or public concerns that arise during the conduct of the EA and which may warrant further consideration of the need for a review panel or mediator.

Process for Environmental Assessment Screening Report

18. The Commission determines the process to be followed with respect to the EA Screening Report, including whether the EA screening Report would be reviewed in the context of a public hearing of the Commission.
19. The Commission sought clarification as to whether the CNSC staff's recommendation not to consider the Screening Report at a future public hearing was based on the lack of public involvement with the proposed project. CNSC staff responded that the proposed project involves the replacement of an existing facility which has not raised public concern in the past to warrant a public hearing. Furthermore, key stakeholders have indicated that they have no concerns related to the EA for the proposed project. CNSC staff noted, however, that they will hold public meetings in the community to discuss the project and the findings in the Environmental Assessment Study Report and on the Screening Report.
20. Based on the above information and considerations regarding public consultation and comments received to date, the Commission is satisfied that the Commission's consideration of the completed Screening Report will not require a public hearing of the Commission. The Commission notes, however, that, depending on the findings and level of public concern that arise during the course of the EA, the Commission may choose to revisit this decision.

Scope of the Project

21. "Scope" under the CEAA is expressed in two parts: the *scope of the project* (i.e., the physical works and activities proposed) and the *scope of assessment* (i.e., the scope of the factors to be considered in assessing the effects of the project). This section addresses only the issues relating to the *scope of the project*. The issues related to the *scope of assessment* are discussed below in the section entitled Scope of the Assessment.

22. Based on the information received, the Commission determined that the scope of the project is as defined in section 7.0 of the draft EA Guidelines. The scope of the project includes the physical works involved in this project such as the effluent treatment plant, the settling pond dam and spillway and access road. The Commission notes that the activities to be undertaken in association with the physical works include construction of an access road, construction of a new effluent treatment plant, construction of the dam and spillway, the demolition of the existing effluent treatment plant, and the operation of the new effluent treatment plant.

Scope of the Assessment

23. The other part of “scope” under the CEAA is the *scope of the assessment* – otherwise described in the CEAA as the scope of the factors that will be considered in assessing the environmental effects of the project.
24. The scope of a screening assessment under the CEAA must include the factors set out in paragraphs 16(1)(a) to (d) of the CEAA. Other factors may be included at the discretion of the Commission under paragraph 16(1)(e) of the CEAA.
25. The mandatory factors in subsection 16(1) of the CEAA are: the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out; the significance of the effects identified above; comments from the public that are received in accordance with the CEAA and its regulations; and measures that are technically and economically feasible that would mitigate any significant adverse environmental effects of the project.
26. In addition to these factors, CNSC staff recommended that the Commission include, pursuant to paragraph 16(1)(e), the following factors: consideration of the purpose of the project; consideration of the need for a follow-up program; and to require consideration of alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means.
27. A summary of the proposed factors is included in section 8.0 of the draft EA Guidelines presented in CMD 06-H108. The proposed factors and recommended approach to their assessment are further elaborated in section 9.0 (Assessment Methodology) of the draft EA Guidelines.
28. The Commission is satisfied that the structure, approach, and other instructions for conducting the environmental assessment, as described in the draft EA Guidelines attached to CMD 06-H108, are acceptable. In this respect, the Commission accepts the delegation of the technical studies to Rio Algom under the direction of the CNSC

and with the input of other expert government departments.

29. Based on its consideration of the information received, the Commission determined that the scope of the factors will be as stated in section 8.0 of the draft EA Guidelines. The Commission also concludes that the scope of the assessment, as described in section 9.0 of the draft EA Guidelines, is appropriate for the purpose of the environmental assessment of the proposed project.

Conclusion

30. The Commission has considered the submissions of CNSC staff as presented for reference on the record for the hearing.
31. The Commission, pursuant to sections 15 and 16 of the CEAA, approves the *EA Guidelines (Scope of Project and Assessment) - Replacement of the Stanleigh Effluent Treatment Facility*, as presented in Appendix A attached to CMD 06-H108.
32. The Commission also concludes that, at this time, it will not refer the project to the federal Minister of the Environment for referral to a mediator or review panel in accordance with the provisions of the CEAA.
33. Furthermore, and taking into account the proposed public consultation program which will form part of the EA process described in the EA Guidelines, the Commission is satisfied, at this time, that the completed EA Screening Report that will come before the Commission for approval will not require a public hearing.
34. The Commission requests CNSC staff to report to the Commission on any issues arising during the conduct of the EA that could warrant the Commission giving further consideration to the above scope and process decisions.

Marc A. Leblanc
Secretary,
Canadian Nuclear Safety Commission

Date of decision: March 30, 2006

Date of release of Reasons for Decision: April 25, 2006