



**BY MAIL AND FACSIMILE**

March 11, 2010

Linda Nagel  
President and CEO  
Advertising Standards Canada  
175 Bloor St. East  
South Tower, Suite 1801  
Toronto, ON M4W 3R8  
Fax: 416-961-7904

CC: Mr. Gord Miller, Environmental Commissioner of Ontario

Dear Ms Nagel:

**Re: Contravention of the *Canadian Code of Advertising Standards***

Please find enclosed a complaint pursuant to Advertising Standards Canada's Special Interest Group Complaint Procedure. This submission is made in response to an advertisement for the Power Workers' Union that appeared in the *Globe and Mail* on December 11, 2009. If you have any questions or comments about this submission, please do not hesitate to contact our counsel, Joanna Bull, at 416-861-1237 or [Joanna@waterkeeper.ca](mailto:Joanna@waterkeeper.ca).

Yours truly,

Mark Mattson  
Waterkeeper & President

600 Bay Street, Suite 410. Toronto, ON M5G 1M6

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PROUD MEMBER OF WATERKEEPER ALLIANCE

## Part I - Overview

[1] Lake Ontario Waterkeeper (LOW) is a grassroots environmental charity that uses research, education, and legal tools to protect and restore a fishable, drinkable, swimmable Lake Ontario. We are a non-political organization focusing on research and justice issues in the general public interest. LOW has extensive experience working on issues related to the nuclear industry, which is one of the most significant sources of pollution on Lake Ontario. The shores of the lake are home to nuclear fuel processing plants, nuclear power plants, and nuclear waste sites. Nuclear-related pollution is well documented throughout the Lake Ontario watershed, particularly in communities like Port Hope that have hosted the industry for decades. LOW's concerns focus on the impacts of nuclear pollution on the integrity of the lake as aquatic habitat, a place for recreation, and a source of drinking water for millions of people.

[2] Advertising Standards Canada (ASC) is a national not-for-profit body that provides self-regulation for the advertising industry in Canada. Created by the industry in 1957, ASC works on behalf of its members, the public, and the industry to ensure the integrity and viability of advertising in Canada. ASC aims to foster confidence in the advertising that is presented to Canadians. To fulfill its mandate, it applies and enforces the *Canadian Code of Advertising Standards* (the *Code*).

**Appendix A: *Canadian Code of Advertising Standards*, online: Advertising Standards Canada <[www.adstandards.com/en/Standards/canCodeOfAdStandards.aspx](http://www.adstandards.com/en/Standards/canCodeOfAdStandards.aspx)> [Code].**

[3] The *Code* classifies complaints as either “Consumer Complaints” or “Special Interest Group Complaints”. “Special Interest Group” is defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement, and/or the production method or technique, and/or the medium, used to carry the advertisement and convey its perceived message. As a charity working in the public interest, Lake Ontario Waterkeeper qualifies as a “Special Interest Group” under the *Code*.

**Appendix A: *Code*, supra.**

**Appendix A: *Special Interest Group Complaint Procedure*, online: Advertising Standards Canada <<http://www.adstandards.com/en/ConsumerComplaints/SIGComplaintProcedureMay2003.aspx>> at Definitions [*Special Interest Complaint Procedure*].**

[4] When ASC receives a “Special Interest Group” complaint, staff perform an initial evaluation of the advertisement. If the complaint raises a potential *Code* issue, the advertisement is reviewed by the National Consumer Response Council (the Council). The Council includes business professionals and members of the public. It is supported by, but independent from, ASC. For its review, the Council will request a response from the advertiser. If the Council concludes that the *Code* has been violated, it will request that the advertiser amend or withdraw the advertising

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without unreasonable delay.

**Appendix A: Code, supra.**

**Appendix A: Special Interest Group Complaint Procedure, supra.**

[5] On December 11, 2009, an advertisement created by the Ontario Power Workers' Union (the PWU) appeared in the printed version of the *Globe and Mail*. The advertisement claimed that CANDU nuclear reactors, which are currently used to produce electricity at Ontario's three nuclear power plants, are "emission-free". Ontario Power Generation (OPG) is a provincial crown corporation that owns and operates two nuclear power plants on Lake Ontario. Their employees are represented by the PWU.

**Exhibit 1: The Globe and Mail (11 December 2009), CC2 [Power Workers' Union Advertisement].**

[6] Lake Ontario Waterkeeper submits that this advertisement violates section 1 of the *Canadian Code of Advertising Standards* by containing an inaccurate, deceptive claim that nuclear power production, specifically the operation of a CANDU reactor, is "emission-free". The general impression conveyed by the advertisement, as received or perceived by the public, is that the operation of CANDU reactors results in no emissions to the environment. LOW has compiled evidence to demonstrate that the representation in question is an advertisement subject to the Code and is factually inaccurate and misleading to the public.

**Appendix A: The Code, supra at s. 1.**

## Part II - Law

[7] The Canadian Code of Advertising Standards is applied by ASC to promote their mandate of fostering confidence in advertising. Section 1 of the Code, "Accuracy and Clarity", states that:

- (a) Advertisements must not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service. In assessing the truthfulness and accuracy of a message, the concern is not with the intent of the sender or precise legality of the presentation. Rather, the focus is on the message as received or perceived, i.e. the general impression conveyed by the advertisement.
- (b) Advertisements must not omit relevant information in a manner that, in the result, is deceptive.
- (c) All pertinent details of an advertised offer must be clearly and understandably stated.
- (d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly visible and/or audible.
- (e) Both in principle and practice, all advertising claims and representations must be supportable. If the support on which an advertised claim or representation depends is test or

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survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with due recognition of the various costs of doing business.

(f) The entity that is the advertiser in an advocacy advertisement must be clearly identified as the advertiser in either or both the audio or video portion of the advocacy advertisement.

**Appendix A: *The Code*, supra at s. 1.**

[8] Canadian Standards Association established “best-practices” for environmental advertising in “*Environmental claims: A guide for industry and advertisers*” (the *Environmental Claims Guide*). This publication provides information to advertisers concerning self-declared environmental claims, which are defined as:

[T]he kind of claims that are made by manufacturers, importers, distributors, or any person who promotes a product/service or business interest who is likely to benefit from the product’s environmental claims. These claims are usually based on a single attribute...

The *Environmental Claims Guide* is a resource for ASC staff and the Council when interpreting complaints under the *Code* that involve environmental claims.

**Appendix A: Canadian Standards Association, *Special Publication PLUS 14021 - Environmental claims: a guide for industry and advertisers* (Mississauga: Canadian Standards Association, 2008) at 2 [*Environmental Claims Guide*].**

[9] According to ASC’s Interpretation Guideline #3, the *Environmental Claims Guide* is relevant in assessing *Code* violations:

When evaluating complaints involving environmental claims that allegedly are misleading or deceptive, Council may, in exercising its judgment, take into account the standards proposed by... Special Publication PLUS 14021.

**Appendix A: *Interpretation Guideline #3 – Environmental Claims*, online: Advertising Standards Canada <<http://www.adstandards.com/en/Standards/interpretationGuideline3.aspx>>.**

[10] The *Environmental Claims Guide* includes Section 4: “General requirements for all claims”. Subsection 4.5 states that:

An environmental claim of “... free” shall only be made when the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level.

**Appendix A: *Environmental Claims Guide*, supra at s. 4.5.**

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## Part III – Issue

**Issue 1:** Does the PWU advertisement that appeared in the *Globe and Mail* on December 11, 2009 constitute an inaccurate claim in contravention of Section 1 of the *Canadian Code of Advertising Standards*?

**Sub-Issue 1:** Does the PWU message constitute an advertisement for the purposes of the *Code*?

**Sub-Issue 2:** Is the statement made by the PWU, that nuclear energy produced by CANDU reactors is “emission-free”, inaccurate?

## Part IV - Facts

**The Power Workers’ Union created and ran an advertisement that claimed that CANDU nuclear reactors are “emission-free”.**

[11] On December 11, 2009, an advertisement created by the PWU appeared in the printed version of the *Globe and Mail*. The advertisement was a special information supplement. It claimed that CANDU reactors, which are currently used to produce nuclear power at Ontario’s three nuclear power plants, are “emission-free”.

**Exhibit 1: Power Workers’ Union Advertisement, *supra*.**

**CANDU nuclear reactors are not emission-free.**

[12] There is overwhelming evidence showing that the operation of CANDU reactors for the production of nuclear energy results in the emission of pollutants into the environment. Data from the Canadian Nuclear Safety Commission (CNSC) and the Ontario Ministry of the Environment (MOE) demonstrate that CANDU nuclear reactors emit a wide range of contaminants into the air and water.

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[13] On June 30, 2009, OPG sought a renewal of their Basic Comprehensive Certificate of Approval for their Darlington Nuclear power generating facility in the Municipality of Clarington. In the application, OPG states that the following contaminants are emitted into the atmosphere from, “all sources at the facility, including (4) CANDU generating units...”:

**2-propenoic acid, ammonia, aromatic hydrocarbon resin, benzene, carbon dioxide, carbon monoxide, hydrazine, morpholine, nitrogen oxides, phosphoric acid, quarterly ammonium compounds, sulphur dioxide, suspended particulate matter, and total hydrocarbons.**

**Exhibit 2: Government of Ontario, *EBR Registry Number: 010-7054* (Toronto: Ministry of the Environment, 2009), online: Environmental Registry <[www.ebr.gov.on.ca](http://www.ebr.gov.on.ca)>.**

[14] The Canadian Nuclear Safety Commission (CNSC) was created under the *Nuclear Safety and Control Act* to regulate the nuclear sector in Canada. In 2000, the CNSC reported that the following contaminants are emitted from nuclear reactors (including CANDU reactors): **tritium oxide, iodine-131, noble gases, radioactive particulates, carbon-14, and liquid releases that contain tritium oxide.** Noble gases include xenon, argon, krypton, neon, and helium. Radioisotopes of these noble gases are created during the operation of a nuclear reactor.

**Exhibit 3: Canadian Nuclear Safety Commission, *Radioactive Release Data from Canadian Nuclear Generating Stations 1990 to 1999* (Ottawa: Minister of Public Works and Government Services Canada, 2000) at 3 & 36.**

[15] The CNSC has stated that all CANDU reactors release radioactive material, including tritium. The CNSC further states that tritium is released in the form of a gaseous emission into the atmosphere. Tritium is a radioactive form of hydrogen that is released into the air and water from nuclear plants. Tritium is dangerous when eaten or absorbed into the skin. It is associated with cell damage and has the potential to induce cancer.

**Exhibit 4: Canadian Nuclear Safety Commission, *Tritium Releases and Dose Consequences in Canada* (Ottawa : Minister of Public Works and Government Services Canada, 2009) at 13 [*Tritium Releases and Dose Consequences*].**

**Exhibit 5: U.S Department of Energy, Human Health Fact Sheet Tritium, (Argonne: Argonne National Laboratory, 2005) online: Environmental Science Division <<http://www.ead.anl.gov/pub/doc/tritium.pdf>>.**

**Exhibit 6: James D. Happell, “A history of atmospheric tritium gas (HT) 1950-2002” (2004) 56:3 *Tellus Series B: Chemical and Physical Meteorology* 183 at 183.**

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[16] According to the CNSC, in 2006, the levels of tritium emitted as gas were  $1.3 \times 10^{14}$  Bq from the Darlington Nuclear Generating Station,  $5.7 \times 10^{14}$  Bq from the Pickering Nuclear Generating Station, and  $9.0 \times 10^{14}$  Bq from the Bruce Nuclear Generating Station. In 2006, the levels of tritium emitted as liquid effluent were  $1.9 \times 10^{14}$  Bq from the Darlington Nuclear Generating Station,  $3.3 \times 10^{14}$  Bq from the Pickering Nuclear Generating Station,  $7.3 \times 10^{14}$  Bq from the Bruce Nuclear Generating Station.

**Exhibit 4: *Tritium Releases and Dose Consequences*, supra at 17.**

[17] Tritium levels in the air and water surrounding nuclear facilities are greater than background levels. Atmospheric tritium concentrations close to nuclear facilities can reach 10 Bq/m<sup>3</sup> (Becquerels per cubic metre) and 100 Bq/L (Becquerels per litre) in water. The concentration of tritium in the air can be taken to be 1 Bq/m<sup>3</sup> closer to nuclear facilities that operate CANDU generators in Ontario. As one moves farther away from a nuclear facility, the levels average 0.1 Bq/m<sup>3</sup> for air and 5 Bq/L for water. Furthermore, the background level of tritium in water in Ontario is between 2 to 3 Bq/L. The elevated tritium levels around nuclear facilities suggest a connection between the documented tritium releases and accumulation of tritium in the environment.

**Exhibit 7: Richard V. Osborne, *Tritium in the Canadian Environment: Levels and Health Effects* (Ottawa : Canadian Nuclear Safety Commission, 2002) at i, 1, 6, 7 & 8.**

**Exhibit 8: Ontario Drinking Water Advisory Council, *Report and Advice on the Ontario Drinking Water Quality Standard for Tritium* (Toronto: Ontario Minister of Environment, 2009) at 3 [ODWAC Report].**

[18] To summarize, CANDU reactors emit pollutants into the environment including, but not limited to tritium oxide, hydrazine, and carbon-14. CANDU reactors are therefore not “emission-free”.

## Part V - Argument

**The Power Workers’ Union message is an advertisement for the purposes of the Code.**

[19] The Code defines “advertising” as:

Any message (the content of which is controlled directly or indirectly by the advertiser) expressed in any language and communicated in any medium...to Canadians with the intent to influence their choice, opinion or behaviour.

**Appendix A: Code, supra.**

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[20] The Code applies to advertising by (or for):

[A]dvertisers promoting the use of goods and services; corporations, organizations or institutions seeking to improve their public image or advance a point of view; and governments, government departments and crown corporations.

**Appendix A: Code, supra.**

[21] The PWU represents power production workers in Ontario. As a union that is “seeking to improve their public image or advance a point of view”, it can be classified as an “organization” and is therefore subject to the Code.

**Appendix A: Code, supra.**

[22] The December 11, 2009 PWU “special information supplement” communicates a message through a newspaper medium that is available to Canadians. The message was published in the *Globe and Mail*, a national daily newspaper with an average Friday readership of 317,965 people.

**Exhibit 9: Audit Bureau of Circulations, Canadian Newspaper Audit Report: The Globe and Mail (2009).**

[23] The PWU advertisement promotes the use of CANDU nuclear reactors, which are built by Atomic Energy of Canada Limited (AECL) and are one of several reactor technologies available for nuclear power production. Ontario is currently considering three possible reactor designs for the proposed Darlington New Nuclear Power Plant in Clarington, one of which is AECL’s CANDU technology. The advertisement argues for, “Building ‘Made in Ontario,’ proven and improved, emission-free CANDU reactors now.” This argument is printed in large font in a text box that is inset in a statement made to resemble a newspaper article.

**Exhibit 1: Power Workers’ Union Advertisement, supra.**

[24] The PWU advertisement intends to influence Ontarians’ opinions and choices related to nuclear power generally and CANDU reactors specifically. The statement aims to advance the point of view that Ontario should be “acting now to build proven and improved ‘Made in Canada’ emission-free CANDU reactors...” The advertisement further intends to convince Ontarians that CANDU reactors are emission-free and therefore environmentally friendly. The advertisement highlights this assertion by characterizing CANDU reactors as “emission-free” in large font.

**Exhibit 1: Power Workers’ Union Advertisement, supra.**

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**The Power Workers' Union advertisement is inaccurate, contravening section 1(a) of the Code.**

[25] The statement made by the PWU, that nuclear energy produced by CANDU reactors is “emission-free”, is in violation of section 1 of the Code. It does not comply with the Code’s requirement that advertisements be both accurate and clear. Section 1(a) states:

Advertisements must not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service. In assessing the truthfulness and accuracy of a message, the concern is not with the intent of the sender or precise legality of the presentation. Rather, the focus is on the message as received or perceived, i.e. the general impression conveyed by the advertisement.

**Appendix A: Code, supra, s. 1(a).**

[26] The PWU advertisement violates section 1(a) because the direct statement made in regards to CANDU reactors is both inaccurate and deceptive. The evidence presented above demonstrates that nuclear energy produced with CANDU reactors is not “emission-free”. However, a reasonable person would perceive the PWU statement to mean that no contaminants are released into the environment from the operation of CANDU reactors. The advertisement makes a direct statement that is not true with respect to emissions, which in turn creates an inaccurate perception that CANDU reactors have no impact on the environment.

[27] Section 4.5 of the *Environmental Claims Guide* presents important criteria for assessing the accuracy of claims. It states:

An environmental claim of ‘...free’ shall only be made when the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level.

**Appendix A: Environmental claims guide, supra at 10.**

[28] The PWU advertisement claims that nuclear power is “emission-free”. However, tritium levels at CANDU reactor sites are higher than the naturally occurring background levels. The evidence outlined above supports the conclusion that CANDU reactors are directly emitting a variety of contaminants. Therefore, the claim made by the PWU does not meet the standard outlined by the *Environmental Claims Guide*, and it is inaccurate for the purposes of section 1(a) of the Code.

**Exhibit 8: ODWAC Report, supra at 37.**

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## Part VI - REQUEST

[29] The evidence on emissions from CANDU reactors supports a finding that the advertisement presented by the PWU violates section 1 of the *Canadian Code of Advertising Standards*. Lake Ontario Waterkeeper asks that Advertising Standards Canada refer this matter to the National Consumer Response Council for a full review of the complaint. If the Council finds a Code violation, we ask that the Council instruct the PWU to cease applying the term “emission-free” to CANDU reactors in their advertising.

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# Appendix “A”

## Law and Policy

### *The Canadian Code of Advertising Standards*

#### **Definitions**

For the purposes of the Code and this document:

**“Special Interest Group”** is defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement, and/or the production method or technique, and/or the medium, use to carry the advertisement and convey its perceived message.

#### **1. Accuracy and Clarity**

(a) Advertisements must not contain inaccurate or deceptive claims, statements, illustrations or representations, either direct or implied, with regard to a product or service. In assessing the truthfulness and accuracy of a message, the concern is not with the intent of the sender or precise legality of the presentation. Rather, the focus is on the message as received or perceived, i.e. the general impression conveyed by the advertisement.

(b) Advertisements must not omit relevant information in a manner that, in the result, is deceptive.

(c) All pertinent details of an advertised offer must be clearly and understandably stated.

(d) Disclaimers and asterisked or footnoted information must not contradict more prominent aspects of the message and should be located and presented in such a manner as to be clearly visible and/or audible.

(e) Both in principle and practice, all advertising claims and representations must be supportable. If the support on which an advertised claim or representation depends is test or survey data, such data must be reasonably competent and reliable, reflecting accepted principles of research design and execution that characterize the current state of the art. At the same time, however, such research should be economically and technically feasible, with due recognition of the various costs of doing business.

(f) The entity that is the advertiser in an advocacy advertisement must be clearly identified as the advertiser in either or both the audio or video portion of the advocacy advertisement.

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## Interpretation Guideline #3 – Environmental Claims

When evaluating complaints involving environmental claims that allegedly are misleading or deceptive, Council may, in exercising its judgment, take into account the standards proposed by the Competition Bureau and the Canadian Standards Association in the Special Publication PLUS 14021, Environmental claims: A guide for industry and advertisers.

1: November 2008

### PLUS 14021, Environmental claims: A guide for industry and advertisers

#### 4.6 Claims of sustainability

Sustainability can be measurable only over a very long period. It is therefore very difficult to make a verifiable claim of sustainability at one point in time. Claims that refer to specific, registered management systems are sometimes acceptable provided that they can be verified.

The concepts involved in sustainability are highly complex and still under study. At this time there are no definitive methods for measuring sustainability or confirming its accomplishment. Therefore, no claim of achieving sustainability shall be made.

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## Appendix “B”

### Exhibits

- Exhibit 1: *The Globe and Mail* (11 December 2009), CC2.
- Exhibit 2: Government of Ontario, *EBR Registry Number: 010-7054* (Toronto: Ministry of the Environment, 2009), online: Environmental Registry <<http://www.ebr.gov.on.ca>>.
- Exhibit 3: Canadian Nuclear Safety Commission, *Radioactive Release Data from Canadian Nuclear Generating Stations 1990 to 1999* (Ottawa: Minister of Public Works and Government Services Canada, 2000) at 3 & 36.
- Exhibit 4: Canadian Nuclear Safety Commission, *Tritium Releases and Dose Consequences in Canada* (Ottawa : Minister of Public Works and Government Services Canada, 2009) at 13.
- Exhibit 5: U.S Department of Energy, *Human Health Fact Sheet Tritium*, (Argonne: Argonne National Laboratory, 2005) online: Environmental Science Division <<http://www.ead.anl.gov/pub/doc/tritium.pdf>>.
- Exhibit 6: James D. Happell, “A history of atmospheric tritium gas (HT) 1950-2002” (2004) 56:3 *Tellus Series B: Chemical and Physical Meteorology* 183 at 183.
- Exhibit 7: Richard V. Osborne, *Tritium in the Canadian Environment: Levels and Health Effects* (Ottawa : Canadian Nuclear Safety Commission, 2002) at i, 1, 6, 7 & 8.
- Exhibit 8: Ontario Drinking Water Advisory Council, *Report and Advice on the Ontario Drinking Water Quality Standard for Tritium* (Toronto: Ontario Minister of Environment, 2009) at 3 & 37.
- Exhibit 9: Audit Bureau of Circulations, *Canadian Newspaper Audit Report: The Globe and Mail* (2009).