



**SUBMISSIONS
OF LAKE ONTARIO WATERKEEPER
TO THE CANADIAN NUCLEAR SAFETY COMMISSION**

RE: Information and Recommendation of Canadian Nuclear Safety Commission Staff in the matter of Bruce A Refurbishment for Life Extension and Continued Operations Project

DOCUMENT: CMD 05-H10

SUBMITTED TO CNSC: April 19, 2005

c/o Louise Levert, Secretariat
Canadian Nuclear Safety Commission
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Submitted via E-mail: interventions@cnscccsn.gc.ca

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1. Waterkeeper respectfully requests permission to make the following argument before the Canadian Nuclear Safety Commission (hereafter, “the CNSC”) on May 19, 2005, regarding the matter of Bruce A Refurbishment for Life Extension and Continued Operations Project (hereafter, “the Project”).
 2. Waterkeeper has two requests for the CNSC. First, Waterkeeper requests that that the CNSC rule in favour of amending the scope of the Project. Second, Waterkeeper requests that the CNSC rule in favour of referring the Project to a review panel.

The Project Scope

3. Waterkeeper requests that the CNSC rule that the scope of the Project is: ‘the use of SEU-based fuel throughout Ontario and all activities performed in connection to the use of SEU throughout Ontario, including, but not limited to, the manufacture, transportation, and disposal thereof’.

4. Waterkeeper respectfully submits that the CNSC has erred in limiting the scope of the Project to its physical works. Scoping the project is an exercise that involves more than just merely identifying the physical works which trigger the EA.
5. In a recent Federal Court of Appeal decision, *Friends of the West County*, the Court gave the term ‘project’ a broad interpretation based strictly on CEAA. It said that “a project is not a physical work”; that a “project include[s] any construction, operation, modification, decommissioning, abandonment or other undertaking *in relation to the physical work and should be included in the scope of the project.*” [emphasis added]. Therefore, a scoped project ought to be broader than just physical work that is the focus of it.
6. The *Responsible Authority’s Guide* instructs that the “principal project” is the physical work or undertaking which triggered the EA and must always be included as part of the scoped project. Physical works and physical activities which are accessory or ancillary to the principal project must *also* be included in the scope of the project.
7. An accessory to the principal project is evidenced by two characteristics:
Interdependence: If the principal project could not proceed without the undertaking of another physical work or activity, then that other physical work or activity may be considered a component of the scoped project.
Linkage: If the decision to undertake the principal project makes the decision to undertake another physical work or activity inevitable, then that other physical work or activity may be considered as a component of the scoped project.
8. The nuclear industry is also proposing the use of SEU fuel in several reactors in Ontario and concurrently proposing related activities be undertaken to support the use of SEU fuel, including: the blending of SEU at Cameco, Port Hope; the bundling of SEU at Zircotec, Port Hope; the transporting of SEU throughout Ontario; the use of SEU at the four Bruce B reactors; the use of SEU at the four Bruce A reactors, and disposal of SEU-based spent fuel at OPG’s Western Waste Management Facility in Kincardine.

9. The activities at Cameco , Zircatec, and OPG’s WWMF are interdependent and linked to the use of SEU at Bruce A, and must therefore be considered accessory to Bruce A and scoped as components of the project.
10. *Interdependance*: The SEU project at Bruce A cannot proceed without the undertakings and physical activities at Cameco, Zircactec, and OPG’s WWMF because there are no other sources from which Bruce A can get its SEU and because Bruce A must dispose of its spent fuel at the WWMF.
11. *Linkage*: The decision to use SEU at Bruce A makes the decisions to convert, enrich, and bundle SEU at Cameco and Zircatec, and the decision to construct at the WWMF inevitable in that Bruce A cannot begin to use SEU unless Cameco, Zircatec, and OPG all undertake the necessary activities.
12. By scoping the project as merely the activities at Bruce A, instead of as SEU throughout Ontario, the CNSC will permit an artificial separation of all the SEU related undertakings into several projects. With the exception of Zircatec, these activities are all undergoing separate EA’s. Separating a large project into unrelated EA’s prevents meaningful assessment of the cumulative environmental effects of large-scale projects and undermines the purpose of the CEAA.
13. The amended scope would be consistent with the purposes of the Canadian Environmental Assessment Act (“CEAA”), which is meant to provide a means of integrating environmental factors into planning and decision-making in a manner that promotes sustainable development. Environmental Assessments should not focus only on individual projects, but should be used as a planning tool for scrutinizing the larger framework of plans, programs, and polices into which individual projects fit.
14. A ruling for a broadened scope is also consistent with the January 8th, 2004 CNSC decision on Cameco’s SEU blending proposal. In that decision, the CNSC felt that the transport, manufacture, handling, and long-term disposal of SEU ought not to be scoped

components of the Cameco SEU blending project because “the subsequent facilities for the fabrication and use of SEU fuels may vary depending upon market conditions and thus [could] only be considered on a generic or non-site specific basis”.

15. In response to intervenor requests to expand the definition of the regional study area for the Cameco SEU project to include transportation routes and reactor sites, the CNSC decided that without being able to identify a specific reactor and the corresponding transportation route, assessment would be theoretical, conceptual, and generic only, and sufficiently addressed as an incremental effect through the scope of the assessment.
16. Now, all facts are known and the conditions of the January 8th decision are satisfied. With the Bruce A and B reactors identified, the SEU project is no longer theoretical. It is now known where SEU will be produced, by what routes it will be transported, who will be using it, and where it will be disposed. Accordingly, it is now necessary to scope the project as the use of SEU Ontario throughout Ontario.

The Review Panel

17. Waterkeeper requests that the CNSC rule in favour of referring the use of SEU and all activities performed in connection to the use of SEU throughout Ontario to the Minister of the Environment for a review panel because there is public concern.
18. The *Responsible Authority's Guide* has identified what sorts of events qualify as ‘public concern’ within the meaning of the CEAA. It indicates that public concerns can be expressed in many ways, including:
 - a. correspondence and telephone calls to the Minister, local MPs, the Agency, or the department;
 - b. media coverage of public concerns;
 - c. community events, such as demonstrations or meetings about the project;
 - d. formal interventions, and
 - e. informal communication.

19. Lake Ontario Waterkeeper is filing affidavit evidence in support of its position that there exists significant public concern about SEU. Evidence in support of public concern is as follows:
20. At least 8 different federal or provincial Ministers and MP's have been contacted by at least 4 different citizen's groups in regards to their concerns about SEU use in Ontario.
21. At least 27 presentations have been made to at least 3 different Town Councils by 4 different citizen's groups in regards to their concerns about SEU use in Ontario.
22. More than 30 informal communications have been delivered to Town Councils in regards to citizens' concerns about SEU use in Ontario.
23. Close to 300 media articles about SEU in local and regional newspapers throughout Ontario.
24. There have been at least 75 informal meetings and/or public events hosted by citizen groups throughout the province in regards to their concerns about SEU use in Ontario. Attendance at these meetings ranged from 3 to 300 people.
25. There have been at least 34 formal written or oral submissions made to the CNSC by concerned citizens in regards to SEU use.
26. There have been more than 50 informal communications to the CNSC by concerned citizens in regards to SEU.
27. At least 7 formal requests have been made to federal and provincial Environment Ministers, MP's and to the CNSC by citizens' groups for a review panel on SEU use throughout Ontario.

28. At least 431 individual citizens directly affected by the use of SEU in Ontario have declared that they believe that a review panel on SEU is necessary.

29. On the basis of the affidavit evidence, the Lake Ontario Waterkeeper submits that there is sufficient public concern as defined within the Responsible Authority's Guide to warrant a reference to the Minister of the Environment by the CNSC.