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Mr. Mark Warawa

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● (1100)

[*English*]

The Chair (Mr. Mark Warawa (Langley, CPC)): Good morning, colleagues. Good morning, witnesses. We do have quorum, so I'll ask you to take your seats and we will begin. We have a lot to do in a short period of time.

Today we have Cameco, the Canadian Nuclear Association, and Mining Watch Canada.

Thank you, to each of you, for being here. There is up to 10 minutes for each witness group.

We will begin with Cameco Corporation. You have up to 10 minutes.

Mr. R. Liam Mooney (Vice-President, Safety, Health, Environment and Quality, Regulatory Relations, Cameco Corporation): Good morning. My name is Liam Mooney. I'm the vice-president of safety, health, environment and quality, and regulatory relations, with Cameco Corporation.

I'd like to thank you for the opportunity to appear before you today. I'll start by saying that I'm pleased to present to the Standing Committee on Environment and Sustainable Development as part of your ongoing review of the Canadian Environmental Assessment Act, or CEAA.

I am joined today by Jeff Hryhoriw, Cameco's manager of government relations. We have provided a written brief, but before I get into our proposal for positive pragmatic reform for CEAA, I want to provide you with some background on our company.

Cameco is headquartered in Saskatoon. We are one of the world's largest producers of uranium for nuclear energy, accounting for roughly 16% of total global supply. Most of it is generated from our mining operations in northern Saskatchewan.

We also have uranium refining processing and fuel fabrication facilities in Ontario, and we are part of a partnership in Bruce Power's nuclear plant on the shores of Lake Huron. On top of this, we are actively exploring for additional uranium resources in a number of provinces and territories throughout Canada.

Through these various activities, Cameco directly employs almost 3,200 people in this country, with nearly a quarter of our Canadian workforce comprised of first nations and Métis citizens. We are proud to be Canada's largest industrial employer of aboriginal peoples.

With that introduction I'd like to turn now to our views regarding CEAA.

Environmental assessment provides an important framework for sustainable development in Canada, development that builds this country's economic and social well-being. However, some serious flaws inherent in CEAA and its regulations run contrary to the interests of Canadians.

The 2009 report of the Commissioner of the Environment and Sustainable Development cited a number of these problems, specifically noting that the federal EA process suffers from systemic delays, lack of coordination, and focuses on expensive and frustrating process without being able to demonstrate value to the environment or society.

Some positive steps were taken toward improving the federal EA system through the 2010 Jobs and Economic Growth Act. However, more change is necessary, and this review of CEAA presents a welcome opportunity to make further progress.

As an industry proponent of many projects that have been subject to the federal EA process, Cameco has developed a set of four practical reforms that we are proposing. In brief, they are as follows: one, eliminate multiple environmental assessments—in other words, adopt a one project, one process model; two, rationalize project triggers. three, better integrate environmental, social, and economic considerations; and four, establish environmental assessment cycle times.

One additional recommendation we would propose is to ensure that any changes made to improve the federal EA process are extended to all projects that are subject to it, including those involving the Canadian Nuclear Safety Commission in the case of our industry.

We would emphasize that the changes we are proposing are not aimed at lowering environmental standards or removing any area of industrial activity from regulatory scrutiny. Rather, they are simply intended to improve the efficiency, timeliness, and predictability of the EA process. In short, they are reforms that would benefit all Canadians interested in fostering sustainable development by allowing legitimate development to proceed without unnecessary process.

I will now briefly expand on each of these points.

First, with regard to eliminating multiple environmental assessments, there is broad consensus between the provinces and the federal government that the concept of one project, one assessment, appropriate to the scale and complexity of the project, is a laudable goal that should be pursued. This would put an end to the practice where two independent and separate processes are conducted, scrutinizing essentially the same work to accomplish the same overall end. This duplication of effort often results in lengthy delays to projects, without any additional environmental benefit whatsoever. Instead, a single thorough review process undertaken by one level should satisfy both federal and provincial requirements.

In our view, the solution is straightforward: provide the federal authority with the ability to designate another jurisdiction's assessment of a project as equivalent under CEAA. This would eliminate redundancies of overlapping review.

Our second proposed amendment is to rationalize project triggers. Environmental assessment is intended to serve as a planning tool for projects and not be the last word on a project. In practice, the EA process has become much more invasive than that. It has been extended to decisions made with respect to minor approvals on projects that are already covered under an existing licence. The net result is that there are a great number of EAs for minor works or undertakings, introducing lengthy process delays into essentially administrative decisions.

To address this issue Cameco proposes amendments that would end costly and unnecessary reviews on a large number of minor projects while allowing for an increased focus on major projects.

● (1105)

Our third proposed reform is to better integrate environmental, social, and economic considerations. When evaluating environmental mitigation measures, it is important to consider what is technically and economically feasible and to factor in the economic and societal benefits of the project to Canadians.

The intent of CEAA is to promote sustainable development and thereby achieve or maintain a healthy environment and healthy economy. This is reiterated in the Federal Sustainable Development Act, which holds that the basic principle of sustainable development "acknowledges the need to integrate environmental, economic and social factors in the making of all decisions by government".

In practice, however, EAs tend to be reduced to the environmental considerations only and do not contemplate overall regional or even global benefits. As a result, a project offering broader environmental, socio-economic, or sustainable development advancements can be buried under a relatively minor, potentially localized, impact. In addition, CEAA maintains that the facts to be considered in an EA include the need for the project and mitigation measures to be "technically and economically feasible".

This would suggest that a degree of proportionality should be factored in when mandating solutions to rectify an identified potential environmental impact. However, this is seldom the case. In practice, responsible authorities do not appear to contemplate whether a specific environmental protection measure is economic in its own right, whether it's reasonably balanced with the potential economic environmental impact, or what effect it will have on the overall project viability.

Our fourth proposed amendment is to establish environmental assessment cycle times. Without compromising appropriate environmental stewardship, it is vital to shorten EA timelines and accelerate the review of projects that are subject to the federal EA process. The stated goal of the Major Projects Management Office is to complete EAs within two years. Much would be gained by requiring federal authorities to follow timelines mandated by legislation or the federal environmental assessment coordinator.

The new establishing timelines for comprehensive studies regulations are a very promising first step in this regard. They set firm timelines and a transparent means of tracking how the timelines are met. However, our optimism here is premised on these regulations and any other improvements to CEAA being sent to all industry proponents, including uranium industry proponents, irrespective of other federal regulatory regimes.

This leads to our final recommendation, that these and other positive reforms made to the EA process be extended to all projects that are subject to the federal EA process, including those led by the Canadian Nuclear Safety Commission.

In summary, Cameco agrees that Canada's environmental assessment regime must be robust and thorough to ensure that the pristine environment for which our country is world renowned remains well protected. At the same time, it must also be efficient and well coordinated so as not to stifle the development that has enabled Canada to thrive economically and socially.

At present, this balance is not being met. However, changes are possible to CEAA that would vastly improve the efficiency, timeliness, and predictability of the EA process without weakening overall protection of the environment afforded by the current regulatory regime.

The positive pragmatic reforms that we have proposed will go a long way toward addressing the frustrations project proponents in this country regularly encounter under CEAA. We hope that as members of the committee you will likewise appreciate the benefits of these recommendations and incorporate them in your final report to Parliament.

Thank you.

● (1110)

The Chair: Thank you so much. You stayed within the ten minutes, and I thank you for that.

Mr. Kneen, with Mining Watch, is next. You have up to 10 minutes.

Mr. Jamie Kneen (Co-Manager, Communications and Outreach, Environmental Assessment and Africa Programs, MiningWatch Canada): Thank you, Mr. Chair and committee members, for the opportunity to appear before you on this important topic. I apologize that my speaking notes were not ready in time for translation, so you don't have them in front of you, and also that my colleague, Ramsey Hart, was not available to be here today.

MiningWatch Canada is a pan-Canadian coalition of environmental, aboriginal, social justice, international development, and labour organizations that advocates for responsible mining practices and policies in Canada and by Canadian companies operating internationally.

We have extensive experience in the environmental assessment of mining projects, intervening in the public interest as well as working with community groups, first nations, Inuit, and others in their interventions. We've also been actively involved in discussions of environmental assessment policy at federal and provincial levels.

I'd like to start by signalling our concerns over the present review. We don't know what the timing, scope, and focus are, to be honest. Apart from groups and individuals who've been alerted to these hearings and have been invited to participate, there is no indication of when and how the public will be able to participate. Witnesses have very short notice to appear, so have little opportunity to develop more comprehensive submissions or to coordinate with each other.

Finally, there has been no public engagement process, not even a discussion paper, to signal to the public what the government's key considerations for this review might be.

I don't envy you your position. You are now faced with an array of opinions and options, and you will have to find a way to make coherent and constructive recommendations.

It is a real contrast, actually, with the process that led to the creation of the act, which I was part of and which involved broad consultations and extensive deliberations, and included the creation of a regulatory advisory committee to oversee the development of the act's key regulations.

It is also a contrast to the five-year review of the act, with discussion papers, a national consultation process led by the Canadian Environmental Assessment Agency, and the participation of the regulatory advisory committee.

When that review reached this committee, a witness list was developed before the hearings even began. While there was certainly some disappointment in the results, I don't think any stakeholder felt that the process hadn't been fair or that they hadn't been heard.

With reference to CEAA, I will present a number of challenges and recommendations that in our view would help resolve those challenges.

First, public participation and aboriginal engagement need to be reinforced. You've heard mention of the MiningWatch Supreme Court case, and of course the key issue there was public participation. I've circulated a short article about that case.

Along the way it also had to deal with scoping and discretion. Those issues have largely been dealt with, thanks to the court's judgment, but there are still serious obstacles to consistent and effective public involvement in EA processes.

Timeliness is often invoked as an objective, if not a principle, of good EA. Unfortunately, it's often code for, or explicitly identified as, at the proponent's convenience or simply speedy, rather than recognizing the different realities faced by different participants in the process. A fixed period for public review and comment that happens to coincide with a major holiday or harvest season is only timely from an administrative perspective. Releasing documents just before Christmas, for instance, may be convenient for the person trying to clear his or her desk before the holidays, but if it happens too often, people begin to wonder if their input is really welcome.

Participant funding is another challenge. Both the amounts available and the timing of its availability make it difficult for the volunteer-based community organizations that we work with to participate effectively. Funding availability is often announced along with or even after the beginning of the public comment period for guidelines, with the actual allocations being made later on.

This severely restricts people's ability to do serious work at the guideline stage. Ideally, it would be phased, in coordination with the review, and some funding would actually be allocated before groups were expected to start work. Private contractors usually ask for a deposit or a retainer.

Funding amounts are perennially inadequate. In the interest of time, I'll skip the details, but maybe we can come back to that later.

Others have made the point, but I think it bears reinforcing, that public participation is a cornerstone of good EA for several reasons. On practical grounds, local knowledge is often important in understanding environmental impacts, and independent evaluations of project parameters are likewise important in verifying or challenging the proponents' predictions.

At the same time, for any project to make a meaningful contribution to sustainability, it must also be socially accepted. Transparency and fair and meaningful involvement in the assessment process are part of that.

● (1115)

People have an expectation of democratic involvement, and they rely on specialist groups such as ours to support them. Proponents and bureaucrats often seem to have an aversion to greater public involvement, which is understandable. It is messy. People don't always behave. It costs money. It takes extra time. It may highlight deficiencies in the project. It may help create consensus and social licence for a project, or it may highlight fundamental conflicts of interest and may even lead to the cancellation of a project. But in our view, if a critical eye on something prevents a stupid and expensive mistake, isn't that a good investment of time and money?

Second, panel reviews are a crucial component of the environmental assessment regime. The most effective public involvement is through panel reviews in which there are actual hearings and there can be an open and independent presentation and interrogation of evidence. People can be heard and can see how their concerns are dealt with, instead of just reviewing documents and filing comments.

The Supreme Court decision clarified the application of the comprehensive study list regulation, but we're concerned that the decisions on panel reviews are being done arbitrarily. The assessment of the Cliffs chromite project in Ontario's famous Ring of Fire is a good example. The Matawa first nations had asked for a panel review to get a broader and more participatory assessment of cumulative impacts of the project and its related infrastructure and the sustainability of mining development in the region and in the Cliffs mine as a basin-opening project. They have stated that they're not opposed to the project, but they've gone to court because their request to designate the environmental assessment as a comprehensive study was ignored. This situation was entirely avoidable.

Third, a strong and consistent federal role is essential. I found Arlene Kwasniak's submission to you very helpful in drawing an important distinction between duplication and overlap. As the mining association, among others, has pointed out, now that the agency has the necessary authority, unnecessary duplication can be and is being dealt with. We also join the mining association and others in asserting the need for continued funding of the agency to carry out this central role, as well as continued funding for the aboriginal engagement program. We disagree, however, with industry submissions calling for the elimination of overlap and the delegation of assessments to the best-placed regulator, whether federal or provincial.

In addition to the problem of ensuring that eliminating overlap doesn't leave gaps in jurisdiction, as you've already heard from other witnesses, there is not likely to be consensus about which regulator is best placed. Mark Haddock's in-depth comparison of the provincial and federal assessments of the Prosperity Mine project in B.C. shows that the two processes do not look at the same issues in the same light. It's worth noting that under the current rules, there's no reason that project wouldn't have undergone a coordinated joint review. Based on our experience and observations of the Canadian Nuclear Safety Commission, the Canadian Environmental Assessment Agency is best placed to conduct environmental assessments of nuclear installations.

Fourth, regional and strategic environmental assessments need to be included in the legislation. Surprisingly, I disagree with some of your industry witnesses on the need for strategic EA policies, plans, and programs as well as regional assessments. It is precisely by undertaking higher-level assessments that some of the most difficult challenges facing individual project assessments can be addressed. Meaningful EA of policy initiatives would assist in achieving coherence and sustainable development objectives and compliance with international obligations as well as establishing clear criteria for both proponents and the public when individual projects are initiated. Regional EA, closely linked to the development and implementation of land-use plans, would provide a framework for subsequent project proposals. For this reason, some industry groups have strongly supported it.

Finally, the act should include monitoring and enforcement measures. This review provides an opportunity to address the weaknesses of the CEAA regime in following up its predictions and its commitments. As it now stands, compliance with the act ends with the decision to approve a project. Monitoring and enforcement of mitigation measures are left to individual departments and agencies and are therefore vulnerable to capacity limitations and institutional weaknesses. Furthermore, any recommendations emerging from the EA process that do not correspond to specific licensing or permitting requirements may simply slip through the cracks. Unfortunately, these tend to be precisely the innovative and positive measures.

We see EA as part of an integrated and participatory planning process with sustainable development as its ultimate objective. If these reasons don't provide justification, there are also pragmatic and practical reasons to approach it this way: better projects and diminished long-term liabilities; public acceptance and a social licence to operate; and avoidance of lengthy delays and the possible loss of investment due to litigation and public protest.

● (1120)

Thank you very much.

The Chair: Thank you, Mr. Kneen.

Finally, we will be hearing from the Canadian Nuclear Association. You have up to 10 minutes. Thank you.

Ms. Denise Carpenter (President and Chief Executive Officer, Canadian Nuclear Association): Good morning, Mr. Chairman, members of the committee, and the public who are here today.

I have with me today Mrs. Heather Kleb, who is our director of regulatory affairs.

We're here today to speak on behalf of the 70,000 people who work in Canada's nuclear industry. Everyone who works in our industry, be they managers, scientists, technicians, or construction workers, not only work in but have their homes in the communities where our industry resides. They're ensuring the safety of our communities and are protecting the environment we live in today, and therefore our first and most important priority is safety.

The Canadian Nuclear Association has about 100 members. They work in uranium mining and exploration, fuel processing, electricity generation, and the production and advancement of nuclear medicine.

As may be expected, many of our projects and activities are subject to the Canadian Environmental Assessment Act. In fact, our members have completed numerous, many—lots of language like that—environmental assessments in the 15-year period during which the act has been in effect. Environmental assessments have become an integral part of how we conduct our business, and we have gained considerable insight from carrying them out.

While we believe that the environmental assessment is a valuable planning tool that leads to improved decision-making, we also believe that there are areas for improvement, particularly regarding process efficiency and predictability.

Our recommended improvements include the following: a goal should be one project, one assessment by the best-placed regulator; environmental assessments, or EAs, should be effective; EA requirements should be proportional to the risks; EA decisions should be consistent with permitting and authorization decisions; and the EA process and decision-making should be timely.

I will elaborate.

Regarding the principle of one project, one assessment by the best-placed regulator, it's our view that to truly be effective, a project should be subject to one EA only, and that EA should be conducted by the jurisdiction or regulator with the most comprehensive knowledge of the project or industry. In other words, it should be the best-placed regulator. For most of our industry, that would mean the Canadian Nuclear Safety Commission. The only exception we'll bring up would be the province of Saskatchewan, where Canada's uranium mining industry resides. While the CNSC is a knowledgeable regulator, one can never underestimate the value of local knowledge, whether it be local community, aboriginal, or regulatory knowledge. In either case, our members would recommend that the agency with the most appropriate authority over a project assume responsibility for the EA and the decision. They also recommend that one assessment satisfy both federal and provincial requirements.

If the province of Saskatchewan were designated the best-placed regulator for uranium mining, it would be fairly straightforward, as Saskatchewan has one central agency that is responsible for uranium mining EAs. In most situations where the federal government is the best-placed jurisdiction, responsibility for EAs should be consolidated in a strengthened and appropriately resourced Canadian Nuclear Safety Commission, the CNSC.

The Jobs and Economic Growth Act went some distance toward achieving this consolidation by ensuring that where the CNSC is the full life-cycle regulator, its EA and licensing process will substitute for the CEAA process. Recent efforts to establish a memorandum of understanding between the Canadian Environmental Assessment Agency and the CNSC allow the CNSC's EA to substitute for an EA by a review panel.

This also went some distance toward a single assessment process. However, there is an opportunity to build on these efforts by further consolidating the CNSC licensing process and the EA process in a single process when screenings are needed.

There's also an opportunity to improve the effectiveness of the EAs so that Canadians can have confidence that they're fostering environmentally and socially responsible economic activity. The intent of the act is to promote sustainable development and to thereby achieve and maintain a healthy environment and a healthy economy. However, the focus is obviously, and often, on the environment rather than on the economic aspects of the project.

● (1125)

Improvements could be achieved through better integration of the environmental, social, and economic considerations. These steps would help ensure the EAs are fostering the environmentally responsible economic activity that underlines Canadian prosperity.

For example, nearly 6,000 federal EAs are conducted each year, requiring scientific studies and reports, but there's limited allowance for the application of these EAs to similar or related projects. This situation could be improved by enhancing the precedent value of EAs, which would also increase the cost effectiveness. Maximum use should be made of the information that's already been collected through previously completed EAs.

The scope of the EAs should also be proportionate to the environmental risk. The act allows for three types of EAs—screenings, comprehensive studies, and review panels—so that the more likely a project is to cause significant adverse environmental effects, the more substantive the process, but because of overly inclusive law list regulations and underdeveloped exclusion list regulations, routine administrative activities such as approvals made pursuant to a licence can trigger an EA. That is because the EA process is triggered for projects involving the listed legal provision without consideration for the extent, the scope, of the activity in question.

Under the Nuclear Safety and Control Act, the process is triggered whenever a licence is issued or amended or an approval is issued pursuant to a licence. Such approvals should not trigger an EA when there are no new risks. The EA scope should instead focus on the risks that were not previously addressed. Known and manageable risks that were previously addressed through EAs and other regulatory processes should not be re-evaluated. That undermines the earlier process and leads to unnecessary duplication. This could be prevented by amending the exclusion list regulations to exempt minor approvals for the existing facilities from another EA and modifying the act to exempt activities that improve environmental performance.

Re-evaluating should also be avoided in subsequent authorizations and permitting processes. Currently, the act has no application to permitting, licensing, or any other authorizations that are required following the EA. That in fact triggers the EA. As a result, these authorizations are not always consistent with the EA conclusions.

The absence of coordination is particularly apparent on the federal level when an authorization under the Fisheries Act may not be acceptable under the Nuclear Safety and Control Act licensing process. Ideally, if an EA concludes that a project is unlikely to result in significant adverse environmental effects and the risks addressed by subsequent authorizations were previously assessed, then authorizations should be certain and timely.

To increase certainty, CNA members recommend that proponents be able to opt for review of permits and other authorizations as early in the EA process as they choose. Also, Fisheries Act and other authorizations should be maintained as discrete processes, separate from the EA, and not delay the EA process.

Together these recommendations would improve certainty and the timeliness of the EA process. The duration of an EA process can be long and unpredictable. According to the Major Projects Management Office, the typical timeframe for the approved major projects in Canada is four years, not counting the studies carried out by the proponent.

In closing, I'd like to reiterate that once the best-placed regulator is identified, federal and provincial agencies should accept each other's processes and decisions as equivalent to their own. EA decisions should focus on the socio-economic as well as the environmental. Previously assessed projects and activities should not be re-evaluated. Authorizations and permits should be consistent with previous assessments. Lastly, the formalized agreement should be established to improve timeliness of the EA process.

Thank you.

● (1130)

The Chair: Thank you so much.

We'll now go to our first round of questioning, and we will begin with Mr. Woodworth. You have seven minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair, and my thanks to all of the witnesses for their attendance here today.

It's a process that has been developed over a number of years, but I still regard the assessment process as being in its formative or adolescent stage. Hopefully it will come to maturity in the next 10 or 15 years.

I don't have much time, so I'd like to direct my questions to Ms. Carpenter, with help from Ms. Kleb, regarding a couple of the proposals you have made. I want to commend the two industry representatives for giving us specific statutory language to work with. We are here to address the architecture of the act, so those kinds of proposals are very helpful.

Mr. Kneen, if you have any proposals for statutory amendments, this is just the committee. It will go to the government eventually. There will still be a lot of consultation. If you have proposals for statutory amendments regarding the architecture of the act, I invite you to let us know.

To the Canadian Nuclear Association, I would like to ask you about issues of substitution and equivalency. I think they are addressed on page 4 of your submission talking about one project, one assessment by the best-placed regulator. There's a comment that each process must have provisions that enable it to incorporate or accommodate the requirements of the other jurisdictions.

One of the concerns we've heard expressed this morning is that there's a difference between duplication and overlap. I think I understand that it's one thing to duplicate the same requirements and standards, but there may be an area where two legislative bodies or two regulators have overlapping jurisdiction but maybe different standards. I think in such a case one would want to ensure that not only the process is accommodated but the standards of relevant legislative authorities are also addressed in a single process.

I don't know if I've articulated that well enough to be understood, but if I have, can you tell me if that would be acceptable? Is that what you are contemplating when you speak about substitution and equivalency?

Ms. Denise Carpenter: Obviously it's a challenge for our industry. I'm going to transfer it over to Heather, because I know she has some very specific answers and situations she would like to relate to you.

But consistency is consistency. If we have to pre-negotiate consistent standards, we need to do it as an industry, as a federal government, as provincial governments, and as regulatory authorities, because that is a problem for a lot of industries, not just ours.

I'll turn it over to Heather on the specifics.

● (1135)

Ms. Heather Kleb (Director, Regulatory Affairs, Canadian Nuclear Association): We would certainly support an initiative to ensure that they are equivalent. I started working on environmental assessments when it was the environmental assessment review process, and I think I was one of the first people to take the course on the Canadian Environmental Assessment Act.

Since that time I've worked on provincial EAs in Saskatchewan, as well as federal EAs in Ontario. We can make this recommendation feeling fully confident that provincial and federal EAs show up with a consistent level of quality and rigour in your environmental assessment process.

Mr. Stephen Woodworth: Very good. So the short answer is that it would actually benefit the industry if not only processes but standards were consistent and accommodated in a substitution or equivalency process. Thank you.

The other area I am interested in is on previously done assessments and the proposal for section 24 in your brief. This is addressed at page 6 of your brief to us. I've looked at the proposed amendment to section 24, and I want to make sure I understand it correctly.

First of all, I understand this has to do with cases where assessments have been performed in similar or related undertakings. Am I right on that?

Ms. Heather Kleb: Yes.

Mr. Stephen Woodworth: Okay. The existing section 24 seems to talk about assessments where the original project was different or didn't go ahead, whereas yours seems to talk about previous assessments where there was a similar undertaking.

Is that the distinction you're trying to draw with this?

Ms. Heather Kleb: Our argument is that section 24 is very limited to environmental assessments that were carried out for the same sort of activity.

At AECL's Chalk River Laboratories there have been about 37 environmental assessments carried out since the Canadian Environmental Assessment Act came into effect. Yet they're still continuously triggering environmental assessments, even though that site is very well studied.

It has exhaustive environmental monitoring programs—ISO-14001-compliant environmental monitoring programs—targeted at identifying potential environmental effects. But small projects like the replacement of a concrete weir in a stream—routine maintenance—are triggering federal EAs under the Canadian Environmental Assessment Act.

So some precedent value needs to be allowed, as a result of those existing EAs and studies, so that those resources are....

Mr. Stephen Woodworth: Maybe it's a....

The Chair: Your time has expired.

Thank you.

Next we have Monsieur Choquette for seven minutes.

[*Translation*]

Mr. François Choquette (Drummond, NDP): Thank you very much, Mr. Chair.

Thank you for being here and for your testimony. It's very much appreciated and we will definitely be taking it into consideration.

My first question is for Mr. Kneen. If I correctly understood, you said that you were lacking information on our current legislative review process and that that had prevented you from being ready. You also said you were wondering about other organizations and public participation in our current evaluation of the Canadian Environmental Assessment Act. Is that correct?

● (1140)

[*English*]

Mr. Jamie Kneen: It was a question of the public and organizations that aren't monitoring the legislative process like we are even knowing that this is happening and being able to prepare themselves or participate. In previous similar processes the agency or other government bodies had been in the public saying, “Okay, we're going to review the Environmental Assessment Act or create an environmental assessment act out of the review process guidelines order”—what is important, and so on.

From looking at what has been brought forward so far, it seems that a range of issues are being put before you. Some are specific and technical. Some are fundamental to the way the act is structured and the way environmental assessment would be undertaken. Outside of a fairly small circle of public interest groups we're involved with, there's not much knowledge of this process. Within this process we don't really know what's being discussed.

So with all due respect, if there's an absence of specific legislative language in my proposals, it's because I don't know whether that's what you're looking for or whether you're looking for a structural assessment of how the thing works before writing the actual language.

[*Translation*]

Mr. François Choquette: Thank you for your answer. I just want to mention that I share that concern as to exactly what the process and timelines of that evaluation will be.

Second, what amendment could be made to the act to increase accountability and public participation?

[*English*]

Mr. Jamie Kneen: First I would say that there have been improvements with the public registry of documentation with the agency's organization of information. Unfortunately, there's no way that a lot of the documentation can be made public. Apparently, this is due to the interpretation of the Official Languages Act: that material that is presented in one language can't be made public in that language until it's translated. That's the explanation the agency has given us over the years.

There are concrete obstacles, and I think part of the difficulty is one of confidence and the inconsistent implementation of this process. The Prosperity Mine is another example of where a panel reported a year ago, and a new panel has been invoked by the agency for essentially the same proposal, based on a request from the proponent. This makes the public and the community groups ask why they should bother and why they should go back to this if the process is going to be that inconsistent, or if similar projects are going to undergo, in one case a comprehensive study and a provincial review, in other cases only a provincial review, and in other cases no provincial review but a federal review. It's a dog's breakfast.

[*Translation*]

Mr. François Choquette: Should we support the participation by the public and the groups concerned by the evaluations in a financially more significant way ?

[*English*]

Mr. Jamie Kneen: Absolutely, yes, and the assumption is generally that an environmental impact statement will be presented that is competent and coherent. Unfortunately, sometimes it's just a cut-and-paste job from the last similar project and doesn't even accommodate the realities of that project. So interveners, public interest groups, really need to have adequate funding for their own technical support to be able to review those things in much greater detail than they normally can under the current system.

Thank you.

● (1145)

[*Translation*]

Mr. François Choquette: With regard to two minor points, the self-assessment and more detailed follow-up, could you briefly give me two short answers since we have little time left.

[*English*]

Mr. Jamie Kneen: In terms of self-assessment, and here we're essentially talking about screenings—there's been a lot of discussion about the thousands of screenings that take place that aren't significant—I would say there has to be a great deal of care not to throw out the baby with the bathwater, because it is entirely possible to have a small project with a significant environmental impact. So there needs to be a very clear sorting mechanism. Some of the mechanisms are in the act and just haven't been used properly—class replacement screenings, for instance. The exclusion list has not been adequately used.

But there was an attempt under the CSA to come up with a Canada-wide standard for environmental assessment that would have laid the groundwork and to a large extent did. It was quite well developed at the point where it was terminated. I would suggest that would be a good starting place for this discussion.

The Chair: Thank you very much. Time has expired.

Next is Ms. Ambler for seven minutes.

Mrs. Stella Ambler (Mississauga South, CPC): My question is for the Canadian Nuclear Association and Ms. Carpenter and Ms. Kleb.

Can you please tell me what is your view of a potential new listing approach to identifying projects subject to CEAA?

Ms. Heather Kleb: Thank you. I would start by saying there are existing inclusion lists, exclusion lists, and law lists. Our recommendation would be to work with the existing lists to better define which projects require assessment. I agree with Jamie in saying that the exclusion list regulations are not sufficiently developed.

In our case, because of the lawless trigger regarding licences, anything we do requires a licence to be issued or amended, so we virtually always trigger the Canadian Environmental Assessment Act —even that replacement of a weir on a small stream at the Chalk River site.

So we would recommend that the exclusion list regulations be further developed to exclude minor works and activities, and also works and activities that were previously assessed. So our licences initially trigger an EA, but even once issued, if it's amended or renewed we continue to trigger EAs on the same sites for similar activities.

Mrs. Stella Ambler: With respect to the current “all in unless” approach versus a list approach, we've heard earlier witnesses who have suggested that a list approach would inevitably exclude new projects, the types of projects that haven't been imagined yet or done or thought of. Do you have any ideas or suggestions for us about how we could deal with that potential challenge?

Ms. Heather Kleb: First, I agree with your comment. There's a lot of innovation in our industry. We could find in a few years' time, say, a new small modular reactor project that isn't on the list.

What we would recommend is to go back to the existing list, particularly the exclusion list, and refine it so that minor works and activities, previously assessed activities, or environmental risks are not repeatedly assessed.

Mrs. Stella Ambler: Do you think we could ensure that such an approach would protect the environmental integrity that we all want to come out of this process?

Ms. Denise Carpenter: Absolutely.

Ms. Heather Kleb: Yes, I agree.

Ms. Denise Carpenter: It's to our advantage to make sure this happens.

Mrs. Stella Ambler: You mentioned that an EA should be allowed to investigate the socio-economic as well as the environmental effects. But I think it's slightly different to say that an EA should be allowed to examine positive environmental effects as well as negative ones. It seems that much of environmental assessment, and perhaps rightly so, is focused on potential negative outcomes. I believe the origins of the act were to make sure that we prevent disasters and environmental destruction. Do you think we should be advancing the study, within the EA process, of potential positive environmental effects as well as negative ones?

● (1150)

Ms. Denise Carpenter: An environmental study should look at the potential negative and positive effects.

Mrs. Stella Ambler: Do you feel that the present process does that?

Ms. Denise Carpenter: Not so much.

Mrs. Stella Ambler: Do you think that the project list approach to determining which projects require a federal EA would be effective in focusing resources on larger projects?

Ms. Denise Carpenter: Absolutely.

Mrs. Stella Ambler: I want to ask you a bit about timelines, particularly legislated timelines. Could you expand on that a little, especially with regard to ensuring that if those were put into place, protection of the environment and environmental integrity would not be compromised?

Ms. Heather Kleb: I guess our members would agree that timelines should be identified for key steps in the environmental assessment process. However, our recommendation is that this should be achieved through agreements on key steps and timelines between the proponent and the agency, rather than in the legislation itself.

Mrs. Stella Ambler: Okay. I appreciate that. I'm sorry, I'm a little bit across the board.

Mr. Mooney, many of your company's projects are located in Saskatchewan, and we heard testimony from the Province of Saskatchewan that their environmental assessment process takes up to a year, while the CNSC screening can take up to three years. Has this been your experience?

Mr. R. Liam Mooney: The province sees all of those EAs, and we're not the only party in that world. Historically, there were some large gaps between processes. But that has mended over time, and we would commend the Canadian Nuclear Safety Commission for their work on screening-level assessments. There can be some disparity between the provincial and the federal processes, though.

The Chair: Thank you. Time has expired.

Next we have Ms. Duncan for seven minutes.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you to all of you for coming.

If I could begin with Ms. Carpenter and Mr. Mooney, both of your groups have raised the importance of looking at economic, environmental, and social impacts as part of this assessment, and I'm wondering, if you could write your wish list, how would you study those economic environmental and social impacts?

Ms. Heather Kleb: I'll start off, and then maybe Liam can follow up.

In my experience, I would say that social, economic, and environmental considerations are considered in the environmental assessment process. They're well studied in the environmental assessment process. Our concern is that when it comes time to make an EA decision, the balance between healthy environment and healthy economy goes one way.

Ms. Kirsty Duncan: And which way is that?

Ms. Heather Kleb: Healthy environment, which we obviously are looking to achieve as well, but both require consideration.

Ms. Kirsty Duncan: So you feel currently the legislation covers economic, environmental, and social impacts?

Ms. Heather Kleb: Absolutely.

Ms. Kirsty Duncan: Okay, thank you.

Mr. Mooney, and then I'll come to Mr. Kneen.

Mr. R. Liam Mooney: We would agree with the CNA in relation to what the current legislation provides and the application thereof. Again, we're more concerned with that balance between the healthy environment and the healthy economy that Heather mentioned. I think the assessment is global in that nature, but sometimes on the economic side it's that balance on the mitigation measures and what might be proposed there. It can get very blue sky in technology as opposed to a balance between the project proceeding and not proceeding—healthy environment, healthy economy.

● (1155)

Ms. Kirsty Duncan: Okay.

Mr. Kneen, do you think that we cover economic, environmental, and social impacts suitably in the current legislation?

Mr. Jamie Kneen: No.

Ms. Kirsty Duncan: What would you like to see? Give me your wish list.

Mr. Jamie Kneen: The current definition is social and economic impacts of the environmental impacts, which is a little bit artful in its formulation, I think. So we would fully support the full inclusion of environmental, social, and economic impacts, except that I have difficulty with this balancing of either/or, because we've already said that the purpose was sustainable development, which is actually trying to make these things work together, not to trade off an unhealthy environment for some money or some jobs, but to find a way forward that actually puts those things together. If we're going to make any meaningful progress, that will be the framework. So it absolutely requires bringing all those aspects together in the assessment and in the decision-making.

Ms. Kirsty Duncan: Thank you. I appreciate that.

Mr. Kneen, you mentioned that one of the things we need to do better is consult with aboriginal Canadians. Again I'll ask for your wish list. You've mentioned funding availability phased, and we need better amounts. Is there anything else you would like to include in that?

Mr. Jamie Kneen: First I would like to say that MiningWatch is a non-governmental organization. It is not an aboriginal organization, although we have strong aboriginal representation on our board of directors and in our membership, and so on. So we're speaking from the perspective of working with first nations communities and organizations and reflecting some of the difficulties they're experiencing.

Ms. Kirsty Duncan: Could you outline those difficulties, please?

Mr. Jamie Kneen: They are access to information, access to money, and access to technical capacity to do their own work in relation to these processes. I think you've heard from the Assembly of First Nations about their overall perspective. I would simply say that it needs to be discussed with them. We can provide some input, but I think that really needs to come from them.

Ms. Kirsty Duncan: Okay.

Mr. Kneen, you've mentioned that you would like to see monitoring and enforcement. Would you outline what you would like to see in terms of both, please?

Mr. Jamie Kneen: This could take a while.

Ms. Kirsty Duncan: Give us as much detail as you can, please.

Mr. Jamie Kneen: The agency has had a quality assurance program in place for some years. It has delivered some mixed results because of its limitations in actually looking at the projects that are being assessed and the assessments that are being undertaken. One of the more difficult aspects of that is actually trying to identify projects that were not assessed because they escaped through some regulatory loophole, escaped screening, and never made it into the assessment process, so we don't know what that comparison looks like.

Ms. Kirsty Duncan: What recommendations specifically? On monitoring?

Mr. Jamie Kneen: Specifically there needs to be a mechanism in place, and I would say through the agency. There is not capacity in place or processes in place at the departmental level, say, at the Department of Fisheries and Oceans, to review the broader recommendations of an environmental assessment process.

That I think can only be done by the agency that is in a position to actually integrate all of those considerations. It would monitor and report on compliance, with recommendations and conclusions coming out of an environmental assessment.

● (1200)

The Chair: You have 30 seconds.

Ms. Kirsty Duncan: Okay. Maybe we should close it down.

The Chair: Thank you.

In the second round we have a very short period of time, so we'll give a minute and a half to Madame St-Denis.

[*Translation*]

Ms. Lise St-Denis (Saint-Maurice—Champlain, NDP): I'm speaking to the representatives of the Canadian Nuclear Association. Can the consolidation of environmental assessment responsibilities, to use your words, be done through the administrative and judicial process within a specialized federal agency with increased licence-granting powers?

[*English*]

Ms. Heather Kleb: Yes.

Ms. Denise Carpenter: Yes.

The Chair: One minute.

Ms. Lise St-Denis: One minute, okay.

[*Translation*]

Your opinion on the authority in the best position to conduct an environmental assessment tends to favour a delegation of authority or administrative expectations between the federal and provincial organizations, as Mr. Woodworth said.

But how could the decisions of those organizations with delegated powers be reviewed without there being a federal intrusion, for example?

[*English*]

Ms. Denise Carpenter: To clarify, first of all, we were talking about Saskatchewan and uranium mining on the provincial side. On the plant side, we're talking about a federal regulator, the Canadian Nuclear Safety Commission.

The Chair: Unfortunately, time has expired.

Closing up this round, Ms. Rempel, for one and a half minutes.

Ms. Michelle Rempel (Calgary Centre-North, CPC): In the brief time I have...Mr. Kneen, you mentioned you had been involved in the process to develop the act some years ago. Our job, as part of this review, is to review what's working, what's not, and where the gaps are.

Very succinctly, in your experience as you've seen things develop over the last 20-odd years, do you have any bullet points on what's working, what's not?

Mr. Jamie Kneen: I would say that the implementation of the processes, the comprehensive studies, and panel reviews is doing quite well.

As I noted, there are problems. I think the largest gap, and the major loss between the guidelines order process and CEAA, was on strategic environmental assessment. There actually were assessments done under EARPGO that can't be done anymore legally because there's no mechanism in place.

The cabinet guidelines directive is not transparent, so it's hard for me to say, beyond what the Auditor General's office has said previously, about how that's working. I would say that's the greatest loss we've had.

The Chair: The time has expired.

Thank you so much. Thank you to the witnesses.

We are going to be moving to in camera business, so I will ask people to leave the room as quickly as possible.

[*Proceedings continue in camera*]

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