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GREENPEACE

March 8, 2016

Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, Ontario
K1A 0A2

Re: Request for a twenty-year review of the Nuclear Safety and Control Act

Dear Prime Minister Trudeau,

We are writing to ask you to initiate a public review and modernization of the *Nuclear Safety and Control Act (NSCA)*. Modernization of the *NSCA* is urgently needed in light of the lack of institutional independence on the part of Canadian Nuclear Safety Commission (CNSC) and lessons learned from the Fukushima disaster.

March 11th marks the fifth anniversary of the devastating earthquake and tsunami that triggered the Fukushima nuclear disaster in Japan. Fukushima is a human tragedy that we never want to happen in Canada. Five years later, over a hundred thousand people are still displaced from their homes, and thousands of others live in areas contaminated by Fukushima's fallout.

Although the earthquake and tsunami are often typically portrayed as the cause of the accident in Canadian media, the Japanese government's investigation concluded that the nuclear accident was clearly "manmade" due to a lax and industry-friendly nuclear regulator.ⁱ That is, the Japanese regulator and Fukushima's operator were aware of the tsunami risk, but did not act on the information. To address the human and institutional causes of the Fukushima disaster, Japan and the European Union increased legal requirements for the independence and transparency of their nuclear regulators.

There has been no such initiative to enhance the CNSC's independence or transparency in light of Fukushima. While the CNSC carried out a review of the technical failures that lead to radioactive releases at Fukushima, it did not consider how institutional failures and industry-led regulation caused the accident. This should be addressed as part of a public review process leading to the modernization of the NSCA.

Over the past several years, the independence of federal environmental agencies, including the CNSC, has been seriously eroded. In 2008, Natural Resource Minister Gary Lunn dismissed Linda Keen as president of the Commission. He cited Keen's management of the shut-down of Atomic Energy of Canada Limited's (AECL) NRU (National Research Universal) reactor and resulting radioisotope shortage as the justification for her removal as Commission president. However, Keen has stated publicly this was "an excuse" and the real reason for her removal was her refusal to grandfather safety standards for AECL's 1970s CANDU-6 reactor design.ⁱⁱ Either way, Keen's removal damaged public confidence in the CNSC and highlighted some potential conflicts in the responsibilities of the CNSC president.ⁱⁱⁱ

Since then, the impartiality of the regulator has been publicly questioned and concerns have been raised about transparency and reduced public participation in decision-making. Some reasons for this perception of partiality include:

- CNSC President Michael Binder publicly criticized Quebec's independent environmental assessment board^{iv}, le *Bureau d'audiences publiques sur l'environnement (BAPE)* when it acted within its jurisdiction and recommended that Quebec not proceed with uranium mining because it is socially unacceptable to Quebecers.^v
- An Environics poll of federal scientists found CNSC scientists were one of the most likely among federal departments to be asked to alter studies for non-scientific reasons. CNSC staff were second most likely (57%) to be aware of cases where the health and safety of Canadians had been compromised due to political interference.^{vi}

- The issuance of a 10-year license to the Darlington Nuclear Generating Station operator – an unprecedented increase in license duration, which will significantly reduce public input and capacity.
- The Minister of Natural Resources, who has the authority to dismiss the President of the CNSC at will, retains the dual role of overseeing the safety regulator and also “promotion” of the industry.
- Statements and actions by the CNSC indicating it favours nuclear energy production and its expansion instead of acting as a neutral objective safety regulator.^{vii viii}

While CNSC’s predecessor, the Atomic Energy Control Board (*AECB*), did have a legislated mandate to “promote” nuclear power, this mission was thankfully removed from the CNSC’s mandate under the *NSCA*. Despite this, the factors listed have contributed to the perception that the CNSC has become promotional of the industry it regulates.^{ix}

You have affirmed that the Government of Canada values the independence of federal authorities, as well as transparency and public participation in decision-making. Modernizing the *NSCA* is in line with these values. The *Act* needs to be strengthened in order to ensure the CNSC is truly independent.

It has been twenty years since the *NSCA* was passed by Parliament. Legislation often undergoes a public review after twenty years. According to documents acquired through Access to Information (ATI), the CNSC is interested in also making amendments to the *NSCA* related to security issues. The Commission, however, views a 20-year review of the *NSCA* as potentially negative because it would involve “scrutiny by ALL stakeholders”.^x

We disagree. We think an open and public review of the *NSCA* is necessary to address lessons from Fukushima and to restore the necessary independence and public trust in the institution.

Based on our dealings with the CNSC, the following are some topics that should be addressed as part of a legislative review to ensure an independent regulator and public safety:

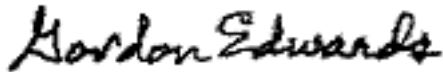
- strengthening the independence of the Commission;
- improving transparency and opportunities for meaningful public participation;
- requiring a sustainable development approach to environmental assessments;
- affirming the necessity for Aboriginal engagement in CNSC decision-making processes;
- clarifying federal roles and responsibilities for nuclear emergency management;
- legislating term limits for licences in order to ensure informed periodic public input; and
- shifting the oversight of the CNSC’s to a Ministry without a mandate to promote nuclear power.

We would be happy to discuss this issue with your staff and the Minister of Natural Resources, and to provide clarifications on the problems identified above, as well as possible legislative solutions.

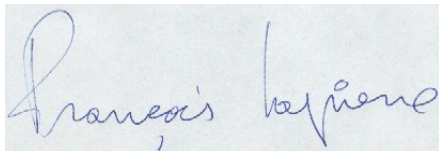
Truly,



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CC:

James Gordon Carr, Minister of Natural Resources
Catherine McKenna, Minister of the Environment
Rona Ambrose, Leader of the Official Opposition
Thomas Mulcair, Leader of the NDP
Elizabeth May, Leader of the Green Party
Kathleen Wynne, Premier of Ontario
Philippe Couillard, Premier of Quebec
Brian Gallant, Premier ministre du Nouveau-Brunswick
Brad Wall, Premier of Saskatchewan
Julie Gelfand, The Commissioner of the Environment and Sustainable Development
Pierre Arcand, Minister of Energy and Natural Resources
David Heurtel, Minister of Sustainable Development, the Environment and the Fight Against
Climate Change
Bob Chiarelli, Minister of Energy

ⁱ The National Diet of Japan, The official report of The Fukushima Nuclear Accident Independent Investigation Commission, 2012, pg. 16.

ⁱⁱ Rennie MacKenzie and Ann MacLachlan, "Ex-CNSC president looks at options after losing challenge to dismissal," *Nucleonics Week*, Vol. 50, Number 16, April 23, 2009.

ⁱⁱⁱ MacKenzie, Brenda (2010), "The Independence of the Nuclear Regulator: Notes from the Canadian Experience", *Nuclear Law Bulletin*, Vol. 2010/1.

^{iv} Michael Binder(CNSC president) to the Honourable David Heurtel (Minister of Sustainable Development, Environment and the Fight Against Climate Change), letter, July 27, 2015.

^v In addition, the BAPE made the reasonable recommendation that Quebec not proceed with uranium mining until Quebec established its own regulatory oversight for uranium mining and until scientific and technological uncertainties are addressed. Bureau d'audiences publiques sur l'environnement (BAPE), *Les enjeux de la filière uranifère au Québec*, Rapport 308, Mai 2015

^{vi} Environics, *Survey of Federal Scientists 2013: Barriers to Effective Communication and Use of Scientific Evidence*, Prepared for the Professional Institute of the Public Service of Canada.

^{vii} Tyler Hamilton, "Nuclear regulator's impartiality questioned," *the Toronto Star*, December 1, 2009.

^{viii} Shawn McCarthy, "Impartiality of federal panel reviewing nuclear-waste plan under scrutiny," *the Globe and Mail*, Sep. 23, 2013.

^{ix} For example, on January 19, 2015 the CNSC send out an email titled "'Environmentalists Urged to Sign Letter to Support Nuclear Energy.'" The Canadian Environmental Law Association, Greenpeace, Lake Ontario Waterkeeper, Sierra Club of Canada and Northwatch subsequently informed the Minister of the Minister of Natural Resource 2015 in a letter February 4, 2015. The CNSC subsequently removed the posting from its website.

^x Access to Request A-2015-00025, Request for: "...whatever briefing notes or presentations supported agenda item "Status Report on Potential Amendments to the Nuclear Safety and Control Act" at the January 22, 2015 Management Committee meeting. The tracking number is ccm-000584."