

## Draft Agreement

### Establishment of a Joint Review Process for the Sydney Tar Ponds and Coke Ovens Sites Remediation Project

#### Between

Her Majesty the Queen in Right of Canada as represented by the  
Minister of the Environment, Canada

- and -

Her Majesty the Queen in Right of Nova Scotia as represented by the Minister of  
Environment and Labour, Nova Scotia (“NSEL”)

#### Preamble

**WHEREAS** the Minister of the Environment, Canada, has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*;

**WHEREAS** the Minister of Environment and Labour, Nova Scotia, has statutory responsibilities pursuant to the Nova Scotia *Environment Act* and has determined the Sydney Tar Ponds and Coke Ovens Sites Remediation to be an undertaking pursuant to subsection 3(2) of the Environmental Assessment Regulations;

**WHEREAS** the Minister of Public Works and Government Services, Canada, and the Premier of Nova Scotia signed a Memorandum of Agreement (MOA) on May 12, 2004, for the Remediation of the Sydney Tar Ponds and Coke Ovens Sites in the Cape Breton Regional Municipality;

**WHEREAS** portions of the Sydney Tar Ponds and Coke Ovens Sites are federally and provincially owned and the remediation of the Sites is jointly funded;

**WHEREAS** the Sydney Tar Ponds Agency (the Proponent) is designated pursuant to the MOA for the management and implementation of the Project;

**WHEREAS** the Sydney Tar Ponds Agency plans to remediate and rehabilitate the Tar Ponds and Coke Ovens Sites, in accordance with the MOA, which is subject to an environmental assessment under both the *Canadian Environmental Assessment Act* and the Nova Scotia *Environment Act*;

**WHEREAS** the MOA commits Canada and Nova Scotia to a joint environmental assessment;

**WHEREAS** the Project was referred to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*;

**WHEREAS** the Minister of Environment and Labour, Nova Scotia, may, pursuant to section 47 of the Nova Scotia *Environment Act*, enter into an agreement with another government agency to conduct a joint environmental assessment review and to adopt for the purposes of the review all or part of that government agency's procedures for environmental assessment;

**WHEREAS** the Minister of Environment and Labour, Nova Scotia, may, pursuant to section 48 of the Nova Scotia *Environment Act*, enter into an agreement with another government agency to provide for a single hearing process;

**WHEREAS** the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, have determined that a joint panel review of the Project will ensure that the project is evaluated according to the spirit and requirements of their respective legislation while avoiding unnecessary duplication, delays and confusion that could arise from separate environmental assessments;

**WHEREAS** the Minister of the Environment, Canada, has determined that a joint review panel should be established pursuant to subsection 40(2) of the *Canadian Environmental Assessment Act*;

**THEREFORE**, the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, hereby establish a joint review panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached hereto as an Appendix.

## 1. Definitions

For the purpose of this Agreement and of the Appendix attached hereto,

### "Agency"

means the Canadian Environmental Assessment Agency.

### "Environmental Effect"

means, in respect of the Project,

- a) any change, whether positive or negative, that the Project may cause in the Environment, including any change it may cause to a listed wildlife species, its critical habitat or the residence of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act* and,

- b) any effect on socio-economic conditions, environmental health, physical and cultural heritage, the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing including those of historical, archaeological, paleontological or architectural significance and,
- c) any change to the project that may be caused by the environment whether any such change or effect occurs within or outside Canada.

**"Environmental Impact Statement"**

means the document that the proponent has prepared in accordance with the Environmental Impact Statement Guidelines to be prepared by the parties.

**"Federal Authority"**

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

**"Follow-up Program"**

means a program for verifying the accuracy of the environmental assessment of the Project, and determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the Project.

**"Joint Review Panel"**

means the review panel established jointly by the Minister of Environment and Labour, Nova Scotia, and the Minister of the Environment, Canada, pursuant to this Agreement.

**"Mitigation"**

means, in respect of the Project, the elimination, reduction or control of the adverse environmental effects of the Project, and may include restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.

**"NSEL"**

means Nova Scotia Environment and Labour.

**"Parties"**

means the signatories to this Agreement.

**"Project"**

means the Sydney Tar Ponds and Coke Ovens Sites Remediation Project, located in Sydney, Nova Scotia, as described in the *Project Description* document submitted by the Sydney Tar Ponds Agency and summarized in Part I of the Appendix attached hereto.

**"Report"**

means the document produced by the Joint Review Panel which shall contain the recommendations of the Joint Review Panel pursuant to the Nova Scotia *Environment Act* and the Joint Review Panel's rationale, conclusions and recommendations, including any mitigation measures and follow-up program, pursuant to the *Canadian Environmental Assessment Act* with respect to the environmental assessment of the Project.

**"Responsible Authority"**

refers to such an authority as defined in the *Canadian Environmental Assessment Act*.

**2. Establishment of the Joint Review Panel**

**2.1.** A process is hereby established for the creation of a joint review panel, pursuant to sections 40, 41 and 42 of the *Canadian Environmental Assessment Act*, and sections 47 and 48 of the Nova Scotia *Environment Act*.

**2.2.** The Agency and NSEL will make arrangements for the coordination of announcements respecting the joint review of the Project, including review process initiatives that precede the establishment of the Joint Review Panel.

**3. Constitution of the Joint Review Panel**

**3.1.** The Joint Review Panel shall consist of three members, one of whom shall be the chair.

**3.2.** The Joint Review Panel members including the chair will be appointed by the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia, from a list of nominees selected by the Parties. Following interviews to be conducted jointly by the Agency and NSEL, each of the Parties will select three nominees and at least one nominee selected by each of the Parties will be appointed members of the Panel. The parties will agree on the appointment of a chairperson. The

members of the Joint Review Panel will be appointed following release of the final EIS Guidelines.

**3.3.** The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

#### **4. Conduct of Assessment by the Joint Review Panel**

**4.1.** The Joint Review Panel shall conduct its review in a manner that discharges the requirements set out in the *Canadian Environmental Assessment Act*, Part IV of the *Nova Scotia Environment Act* and in the Terms of Reference attached hereto as an Appendix.

**4.2.** All Joint Review Panel hearings shall be public and shall provide for public participation.

**4.3.** The Joint Review Panel shall have all the powers and duties of a panel set out in section 35 of the *Canadian Environmental Assessment Act*.

#### **5. Secretariat and Administrative Matters**

**5.1.** Administrative, technical, and procedural support for the Joint Review Panel shall be provided by a Secretariat. The Secretariat shall be the joint responsibility of the Agency and NSEL.

**5.2.** The Secretariat shall report to the Joint Review Panel and shall be structured so as to allow the Joint Review Panel to conduct its review in an efficient and cost-effective manner.

**5.3.** Prior to the appointment of the Joint Review Panel, the Agency and NSEL shall prepare a budget estimate for the joint review.

**5.4.** Costs associated with the review will be apportioned between the parties 70% federally funded and 30% provincially funded. A detailed cost-sharing agreement is to be finalized by the Agency and NSEL prior to the appointment of the Joint Review Panel.

#### **6. Record of Joint Review and Report**

**6.1.** A public registry consisting of all submissions, correspondence, hearing transcripts, exhibits and other information received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the environmental assessment of the Project shall be maintained by the Secretariat during the course of the review in a manner that provides for convenient public access, and for the purposes

of compliance with section 55 of the *Canadian Environmental Assessment Act* and the practices of NSEL.

**6.2.** On completion of the review of the Project, the Joint Review Panel shall prepare a Report for submission to the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia.

**6.3.** The Report shall include recommendations on all factors set out in section 16 of the *Canadian Environmental Assessment Act* and, section 12 of the Nova Scotia Environmental Assessment Regulations. Pursuant to Part IV of the Nova Scotia *Environment Act* the Report shall recommend either the approval, including mitigation measures or rejection of the Project.

**6.4.** Once completed, the Joint Review Panel will submit the Report, to the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia, and the Parties will then make the Report public.

**6.5.** Once the Report is submitted to the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia, the responsibility for the maintenance of the public registry, pursuant to the *Canadian Environmental Assessment Act*, will be transferred to the Responsible Authorities.

**6.6.** All Responsible Authorities shall take into consideration the Report submitted by the Panel and, with the approval of the Governor in Council, respond to the Report. Then, the Responsible Authorities shall take one of the courses of action provided for in subsection 37(1) of the *Canadian Environmental Assessment Act* that is in conformity with the approval of the Governor in Council.

**6.7.** The Minister of Environment and Labour, Nova Scotia, shall consider the recommendation of the Panel, and either approve with conditions, or reject the Project.

**6.8.** The Parties will consult on and coordinate the timing of their respective decisions on the project.

## **7. Other Government Departments**

**7.1.** At the request of the Joint Review Panel, Federal Authorities and provincial government agencies having specialist knowledge with respect to the Project shall provide available information and knowledge in a manner acceptable to the Joint Review Panel.

**7.2.** Subject to article 7.1 and subsection 12(3) of the *Canadian Environmental Assessment Act*, nothing in this agreement shall restrict participation by way of submission to the Joint Review Panel by other federal or provincial government departments or bodies.

**8. Participant Funding**

**8.1.** Participant funding for the joint review will be provided and administered by the Agency pursuant to the federal Participant Funding Program.

**9. Amending this Agreement**

**9.1.** The Parties may amend this Agreement by written memorandum executed by both the Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia. Subject to section 27 of the *Canadian Environmental Assessment Act*, this agreement may, with 30-day written notice, be terminated by either party at any time during the joint review.

In witness whereof the Parties hereto have put their signatures this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
Minister of the Environment  
Canada

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Minister of Environment and Labour  
Nova Scotia

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## **Appendix**

### **Terms of Reference for the Joint Review Process**

#### **Part I - Project Description**

The Sydney Tar ponds Agency (the proponent) is proposing to remediate the Sydney Tar Ponds and Coke Ovens Sites in the Regional Municipality of Cape Breton (CBRM), Nova Scotia.

The proposed remediation project would involve the removal of selected polychlorinated biphenyl (PCB) and polycyclic aromatic hydrocarbon (PAH) contaminated sediments from the Tar Ponds and Coke Ovens Sites, and destroy it in a temporary incinerator that will be located within the CBRM. Sediments that remain in the Tar Ponds would be solidified and stabilized in-place. Water course diversion channels would redirect surface water flowing through the Tar Ponds site. A containment system of barrier walls and an engineered cap would be constructed to reduce exposure and to prevent the movement of contaminants away from the Tar Ponds site. The Tar Ponds site surface would be restored and landscaped in a manner compatible with the natural surroundings of the area and future site uses.

At the Coke Ovens site, selected remaining contaminated soils would be treated in-place using landfarming, a form of bioremediation. Diversion channels and barrier walls would be installed to reroute groundwater and surface water flowing through the Coke Ovens site. A containment system of barrier walls and soil cover would be constructed to reduce exposure to contaminants and to prevent the movement of contaminants from the Coke Ovens site. Coke Ovens site surfaces would be restored and landscaped in a manner compatible with the natural surroundings and future sites uses.

Pre-cleanup activities would include construction of parking lots, equipment and supply storage areas, security facilities, offices and washrooms, decontamination facilities for personnel, equipment decontamination pads, and isolation pads. A dedicated use water treatment facility may be required. An incinerator and associated facilities would be commissioned, requiring an area of approximately 2 to 5 hectares. The proponent plans completion of clean-up and capping of the Coke Ovens site by 2011, and the Tar Ponds site by 2014.

#### **Part II - Components of the Review Process**

1. The Agency and NSEL shall develop joint draft guidelines for the preparation of the Environmental Impact Statement building on the preliminary guidance contained in the document entitled "Remediation of the Sydney Tar Ponds and Coke Oven Sites – Draft Scoping Document" prepared by Public Works and Government Services Canada in consultation with Environment Canada and Transport Canada and dated February 2005. The public and stakeholders shall be provided with 30 days to review the draft guidelines and provide comments to



the Agency and Nova Scotia Environment and Labour.

2. Within 30 days of the close of the comment period specified in clause 1, after taking into account the comments received by the public and stakeholders, the Parties shall issue the Environmental Impact Statement guidelines (the Final Guidelines) to the proponent,
3. The Parties shall require the proponent to prepare the Environmental Impact Statement in accordance with the Final Guidelines issued by the Parties. The Parties expect the Proponent to submit the Environmental Impact Statement to the Joint Review Panel no later than December 30, 2005
4. The Joint Review Panel shall require the proponent to distribute the Environmental Impact Statement for examination and comment by the public and stakeholders to determine whether additional information should be provided before convening public hearings. The Environmental Impact Statement shall be made available for public examination and comment for a period of not more than 48 days.
5. Written comments received pursuant to clause 4 shall be made public and immediately be provided to the proponent by the Joint Review Panel. The proponent shall, as appropriate, provide to the Joint Review Panel its response to the written comments not later than 14 days following completion of the period for public examination and comment.
6. Should the Joint Review Panel identify deficiencies after reviewing the Environmental Impact Statement, and in consideration of any comments received from the public, stakeholders or the proponent pursuant to clauses 4 and 5, the Joint Review Panel may require additional information from the proponent. Any request for additional information shall be issued within 14 days following the expiration of the period for public examination and comment described in clause 4 or 14 days following receipt of written comments from the proponent as described in clause 5, whichever occurs later.
7. The Joint Review Panel shall schedule and announce the start of its public hearings once it is satisfied that sufficient information has been provided; it shall provide public notice of 21 days prior to the start of the hearings. The hearings shall not exceed 21 days in duration. A longer period would require approval by both parties.
8. The Joint Review Panel will hold its hearings within the Cape Breton Regional Municipality.
9. The Joint Review Panel shall deliver its Report to the Parties to this agreement within 55 days following the close of the public hearings. The Parties will then make the Report public.

### **Part III - Scope of the Environmental Assessment and Factors to be Considered in the Review**

The Minister of the Environment, Canada, and the Minister of Environment and Labour, Nova Scotia, have determined that the Joint Review Panel shall include in its review of the Project, consideration of the following factors:

- a. Purpose of the Project
- b. Need for the Project
- c. Alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means
- d. Alternatives to the Project
- e. The location of the proposed undertaking and the nature and sensitivity of the surrounding area
- f. Planned or existing land use in the area of the undertaking
- g. Other undertakings in the area
- h. The environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out.
- i. The significance of the effects referred to in h)
- j. The socio-economic effects of the Project
- k. The temporal and spatial boundaries of the study area(s)
- l. Comments from the public that are received during the review
- m. Steps taken by the proponent to address environmental concerns expressed by the public
- n. Measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project
- o. Follow-up and monitoring programs including the need for such programs
- p. The capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future
- q. Residual adverse effects and their significance