

FILE 23.1.2.

Canada


NOVA SCOTIA

**Memorandum
of
Agreement**

between

the Government of Canada

and

the Government of Nova Scotia

respecting

**Remediation of the Sydney Tar Ponds
and Coke Ovens Sites**

MEMORANDUM OF AGREEMENT

**Remediation of the Sydney Tar Ponds and Coke Ovens Sites
in the Cape Breton Regional Municipality ("MOA")**

between

**Her Majesty the Queen in Right of Canada as represented by the
Minister of Public Works and Government Services ("Canada")**

and

**Her Majesty the Queen in Right of Nova Scotia as represented
by the Premier of Nova Scotia ("Nova Scotia")**

WHEREAS the Government of Canada and the Province of Nova Scotia recognize that the residents of Cape Breton Regional Municipality and First Nations peoples desire that effective and timely action be taken to address their concerns over the current environmental condition of the Sydney Tar Ponds and Coke Ovens sites; and

WHEREAS the Government of Canada and the Province of Nova Scotia are committed to the principles of sustainable development in recognizing the environmental, social and economic dimensions of the Sydney Tar Ponds and Coke Ovens sites; and

WHEREAS the Governments of Canada and the Province of Nova Scotia desire to address these issues in a collaborative and equitable manner and have reached an agreement to take permanent measures by commencing a project with long term benefits for all Canadians and in particular the residents of Nova Scotia.

NOW THEREFORE Canada and Nova Scotia ("the Parties"), involving their respective departments and agencies and using the appropriate strengths and resources of each, in collaboration, agree as follows:

1.0 THE PROJECT

1.1 The Parties will undertake a project (the "Project") for the remediation of the Sydney Tar Ponds and Coke Ovens sites, involving (a) the federally and provincially owned portions of the South and North Ponds of Muggah Creek to Battery Point; and (b) the federally and provincially owned portions of the Coke Ovens Site, including Mullins Bank.

1.2 Subject to a joint Environmental Assessment and to section 2.1, the Project shall include:

- the removal and destruction of PCBs from the tar ponds as well as the removal and destruction of the contents of the tar cell on the coke ovens site with a proven technology such as high temperature incineration in a single use dedicated facility;
- the in-place treatment of the remaining contaminated material using proven technology such as bioremediation, solidification or other appropriate technology;
- the subsequent engineered containment of both sites;
- site restoration and landscaping compatible with the natural surroundings and future use; and
- provision for the ongoing future maintenance and monitoring of the sites for 25 years after completion of the Project.

- 1.3 The Parties shall enter into an agreement describing in detail the specific elements of the Project over a 10 year period, subject to any unforeseen necessary extensions or matters to be addressed jointly, which shall not exceed the scope of the work described in subsection 1.2 above ("the Project Description"). The Project Description will also include a description of the legal survey boundaries of the sites. Upon completion of the Project the Parties agree that the sites will have been remediated in accordance with the intent of this MOA, subject to its provisions, notwithstanding any other meaning of the word remediation.
- 1.4 Immediately upon the signing of this MOA the Parties will undertake the activities set out in Section 4.
- 1.5 The Parties will carry out a joint Environmental Assessment of the Project.
- 1.6 Nova Scotia shall establish a single purpose entity that shall commence operation by September 30, 2004 to manage and implement the Project. This entity shall deliver the Project in a timely and cost effective manner and will have clear accountabilities to be demonstrated through agreed upon monitoring processes. Until this entity has commenced operations, the Sydney Tar Ponds Agency will serve as the managing and implementing agency.
- 1.7 Nova Scotia shall be the lead Party for the Project, shall be responsible for the overall management and implementation of the Project, shall, among other things, make use of independent engineering assessments and audits and shall provide full and open access to Canada to all results and procedures.
- 1.8 Upon issuance of the appropriate Certificate of Project Completion by the Independent Engineer appointed pursuant to Section 3, certifying that the Project has been completed in accordance with the Project Description (as may have been jointly amended during the implementation of the Project to address unforeseen issues or that result from the joint Environmental Assessment) Nova Scotia shall accept full ownership of the sites, except in the event any validated third party claims or interests therein have been established, and shall be responsible for any contemplated future development and any future impact to or on the sites from such development, as well as for all ongoing future maintenance and monitoring of the sites.
- 2.0 PROJECT FUNDING
- 2.1 Notwithstanding anything else contained herein, the total cost of the Project shall not exceed four hundred million (\$400,000,000) dollars.
- 2.2 Nova Scotia shall contribute to the cost of the Project the lesser of 40% of the actual cost incurred or one hundred twenty million (\$120,000,000) dollars.
- 2.3 Canada shall contribute to the cost of the Project an amount that will not exceed two hundred eighty million (\$280,000,000) dollars.
- 2.4 No portion of the respective shares shall be paid in kind.
- 2.5 It is intended that the funding provided under this MOA shall also be used for preventative works described in Table 1 designed to contain and limit any currently occurring dispersion of contaminants such as the installation of a coffer dam at Battery Point and rerouting of Coke Ovens Brook, as well as the other activities referred to in Section 4 and the preliminary works also described in Table 1.

- 2.6 The Parties intend that the Project will be managed in accordance with the terms of this MOA and that there shall be no Project cost overruns. In the event that there are Project cost overruns, they shall be the responsibility of Nova Scotia. The cost of any work, over and above the work set forth in the Project Description, which may by law, regulation or mandatory directive be required to be performed at some future date whether before or after the Project is completed, shall be addressed jointly by both Parties and shall not be a cost overrun.
- 2.7 An increase in the cost of the Project that arises from the subsequent discovery of the occurrence of significant contamination in or on the sites not known to, or due to circumstances not foreseen by, the Parties at the time of the signing of the cost-share agreement shall be addressed jointly by both Parties and shall not be a cost overrun.
- 2.8 It is understood and accepted that there are currently no obligations on either Party to conduct and fund any more work than that described in the Project Description and this understanding and acceptance is the basis of the intent of the Parties in entering into this MOA. Notwithstanding this intent, if a court of competent jurisdiction makes an order, after all appeals have been exhausted and whether before or after the Project is completed, that requires Canada, Nova Scotia or both to conduct work on the sites beyond the Project Description or orders the payment of damages related to the Project, and the cause of action resulting in the order does not relate to the management or implementation of the Project by Nova Scotia, the Parties agree to jointly address those matters and the costs related thereto shall not be a cost overrun.
- 3.0 GOVERNANCE
- 3.1 The Parties shall jointly appoint an individual to be the Independent Engineer who shall be independent of both Parties and perform the duties contemplated under an agreement to be entered into under Section 5. The fees of the Independent Engineer shall be paid out of the funds allocated under this MOA.
- 3.2 The Parties will continue to consider all Project stakeholders by respecting their interests, including development of a community liaison strategy.
- 3.3 The Parties will continue consultation with the First Nation community to enable meaningful participation in economic activity including the development of an aboriginal procurement strategy.
- 3.4 The Parties will foster opportunities for sustainable development activities.
- 3.5 The Parties will develop and manage appropriate communications with all Project stakeholders respecting both federal and provincial protocols.
- 4.0 PRELIMINARY COSTS
- 4.1 In the interim period, from the date of signing of this MOA until the cost-share agreement described in Section 5 is executed, the Parties agree to fund planning, environmental assessment and preliminary preparation costs and associated works through an interim governance and funding approval arrangement described in Section 5.
- 4.2 The above activities as well as the preventative works and the preliminary works identified in Table 1 attached will comprise a component of the cost-share agreement.

5.0 IMPLEMENTATION AGREEMENTS

5.1 Canada and Nova Scotia, represented respectively by the Minister of Public Works and Government Services and the Sydney Tar Ponds Agency will enter into immediate discussions to conclude implementation agreements that will include, but not be limited to the following:

- An interim governance and funding approval agreement;
- An agreement concerning the process for undertaking preventative works and preliminary works identified in Table 1;
- An agreement describing in detail the specific elements of the Project which shall not exceed the scope of the Project described in sub-section 1.2;
- A cost-share agreement to be approved by the Treasury Board of Canada and the Lieutenant Governor-in-Council that will include financial and governance arrangements that will ensure that each of Canada and Nova Scotia independently are able to exercise appropriate due diligence over Project management costs and expenditures; will include a process to jointly address matters where referred to herein; and that will include a formal Communications Protocol;
- An agreement to carry out a joint Environmental Assessment; and
- An agreement to jointly appoint an Independent Engineer setting out the duties of the Independent Engineer and the terms and conditions of the appointment.

5.2 The Parties shall respect the principles and guidelines set out in Annex A attached in entering into the agreements set out in this Section 5.

6.0 FINAL PROVISIONS

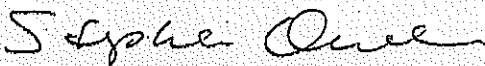
The Parties agree:

- a. to jointly address any required emergency response action in situations where in the opinion of an independent engineer a catastrophic impairment of the Project occurs or could occur as a result of natural disasters or acts of God whether before or after the completion of the Project;
- b. that nothing in this MOA shall be construed as an admission of liability in whole or in part by either Party or prevents either Party in taking any action or raising any defence in defending or advancing its interest in any ongoing or future litigation related in any way to the Sydney Tar Ponds or Coke Ovens Sites; and
- c. to enter into an equally authoritative French language version of this agreement.

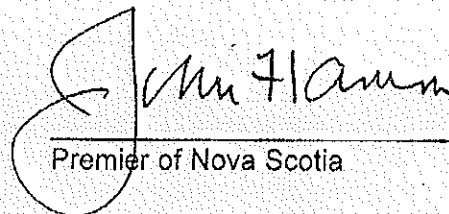
Signed and dated this 12th day of May, 2004 at Sydney, Nova Scotia.

Government of Canada

Province of Nova Scotia



Minister of Public Works and
Government Services



Premier of Nova Scotia

TABLE 1

PREVENTATIVE WORKS

Description	Estimated Costs 2004-2005
Coffer Dam Engineering Design	\$ 500,000
Cooling Pond Engineering Design and Implementation	1,000,000
Realignment of Coke Ovens Brook Engineering Design	300,000
Relocation of Whitney Pier Water Line Engineering Design	50,000
Leachate Collection System Engineering Design	250,000
Total	\$ 2,100,000

PRELIMINARY WORKS

Description	Estimated Costs 2004-2005
Environmental Assessment Review	\$ 1,000,000
Project Description Development	150,000
Site Preparation	250,000
Selection and Engagement of Independent Engineer	300,000
Work Breakdown Structure Development	200,000
Development of Cost to Complete Project Mechanism	125,000
Development of Risk Assessment Strategy	125,000
Development of Results Based Accountability Framework	150,000
Establishment, Organizational Development of Implementing Agency	1,000,000
Total	\$ 3,300,000

Note: All Estimated Costs are based upon Class "D" Estimates

ANNEX A

In entering into, and implementing the Agreements described in Section 5 of the Memorandum of Agreement, the Parties will be guided by the following principles.

1. MANAGEMENT ACCOUNTABILITY PRINCIPLES

The Project:

- will be resourced by both levels of government in accordance with necessary funding appropriation procedures that will include a work breakdown structure;
- will include appropriate governance arrangements for ministerial accountability and reporting to the provincial Legislature and the federal Parliament;
- will have appropriate mechanisms in place to permit long term management, monitoring and corrective action, where necessary;
- will be subject to a jointly conducted environmental assessment;
- will respect federal and provincial principles and policies in planning and implementation; and
- will adhere to all relevant federal, provincial and municipal laws and regulations.

2. PROJECT MANAGEMENT PRINCIPLES

The Project:

- will respect principles of fairness, openness, transparency and competitiveness;
- will have well defined objectives with clear accountabilities;
- will have a sound structure for ongoing decision making (including work breakdown and activity approvals) in accordance with mutually acceptable approval requirements;
- will use a comprehensive and coordinated definition of the overall scope of the Project;
- will contribute to the development of best practices related to the management of contaminated sites; and
- will, through the Parties, jointly address any measures required as a result of any changes to environmental standards, policy or law affecting the Project, which occur prior or subsequent to completion.

3. RISK MANAGEMENT PRINCIPLES

The Project:

- will always focus on reducing any currently known or subsequently identified risks to human health, safety and the environment;
- will be managed in a manner sensitive to risk, complexity and economy of resources;
- will continue to undertake rational priority setting through a systematic identification and categorization of risks, including any litigation risks, and the development of management plans on an ongoing basis throughout the life of the Project;
- will strive to make best use of financial and technological resources through risk management approaches, including the development of an appropriate risk management strategy and appropriate reporting by the independent engineer of adherence to that strategy; and
- will, through the parties, consider responsibility for mitigation of any future liabilities associated with the site through appropriate covenants.

4. COMMUNICATIONS

Communications and public information will follow mutually agreed upon strategies recognizing the federal and provincial nature of this MOA and the communications policies of both levels of government.