

PUBLIC HEARING
SYDNEY TAR PONDS AND COKE OVENS SITES
REMEDIATION PROJECT
JOINT REVIEW PANEL

V O L U M E 6

HELD BEFORE: Ms. Lesley Griffiths, MCIP (Chair)
Mr. William H.R. Charles, QC (Member)
Dr. Louis LaPierre, Ph.D (Member)

PLACE HEARD: Sydney, Nova Scotia

DATE HEARD: Friday, May 5, 2006

PRESENTATION: Nova Scotia Environment and Labour:
Mr. David Briggins (Presenter)
Mr. Terry MacPherson (Presenter)
Mr. Andrew Murphy
Mr. John Drage
Mr. Brent Baxter
Mr. Paul Currie
Ms. Sharon Vervaet

Office of the Medical Officer of Health
Dr. Jeff Scott
Mr. Gordon Mowat

Nova Scotia Transportation and Public Works
Mr. Gary Campbell

Nova Scotia Natural Resources
Mr. Terry Power
Mr. Bill English

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I N D E X O F P R O C E E D I N G S

	PAGE NO.
THE CHAIRPERSON - OPENING REMARKS	1111
NOVA SCOTIA ENVIRONMENT AND LABOUR:	
MR. DAVID BRIGGINS - PRESENTATION	1112
MR. TERRY MACPHERSON - PRESENTATION	1118
OFFICE OF THE MEDICAL OFFICER OF HEALTH	
DR. JEFF SCOTT	1202
NOVA SCOTIA TRANSPORTATION AND PUBLIC WORKS	
MR. GARY CAMPBELL	1267
NOVA SCOTIA DEPARTMENT OF NATURAL RESOURCES	
MR. TERRY POWER	1322
(QUESTIONING)	
NOVA SCOTIA ENVIRONMENT AND LABOUR	
Questioned by Joint Review Panel	1121
Questioned by Les Ignasiak	1167
Questioned by Debbie Ouelette	1170
Questioned by Eric Brophy	1176
Questioned by Grand Lake Road Res.	1178
Questioned by CB Save Our Health	1182
Questioned by Neila MacQueen	1188
Questioned by Cameron Ells	1193
Questioned by CB Save Our Health	1198
OFFICE OF THE MEDICAL OFFICER	
Questioned by CB Save Our Health	1237
Questioned by Sierra Club of Canada	1243
NOVA SCOTIA TRANSPORTATION AND PUBLIC WORKS	
Questioned by Joint Review Panel	1279
Questioned by Eric Brophy	1294
Questioned by Debbie Ouelette	1295

I N D E X O F P R O C E E D I N G S

PAGE NO.

NOVA SCOTIA TRANSPORTATION AND PUBLIC WORKS

Questioned by Grand Lake Road Res.	1297
Questioned by Henry Lelandais	1300
Questioned by Sierra Club of Canada	1302
Questioned by CB Save Our Health	1311
Questioned by Les Ignasiak	1315
Questioned by Marlene Kane	1318
Questioned by Cameron Ells	1320

NOVA SCOTIA NATURAL RESOURCES

Questioned by Joint Review Panel	1329
Questioned by Sierra Club of Canada	1339
Questioned by Save Our Health	1343
Questioned by Les Ignasiak	1343
Questioned by Henry Lelandais	1344

L I S T O F U N D E R T A K I N G S

NO.	DESCRIPTION	PAGE NO.
U-1	Nova Scotia Environment and Labour to provide status of information in terms of reports testing and environmental assessment studies	1199
U-2	Nova Scotia Transportation and Public Works to provide information about the department's role with respect to regulation and management of issues relating to the railroads	1289
U-3	Nova Scotia Transportation and Public Works to provide information about departments role with respect to management and regulation of burrow pits and aggregate sources	1290

1 --- Upon commencing at 9:03 a.m.

2 THE CHAIRPERSON: Ladies and gentlemen,
3 good morning. I would like to start this session, if you
4 would like to take your seats.

5 I'd like to welcome you here for Friday's
6 session of the hearings.

7 Today, we have four presentations from the
8 provincial government. Before I turn to our first
9 presenter, Nova Scotia Environment and Labour, I would
10 like to see if there are any housekeeping issues that
11 have to be addressed, and first I'll ask the Proponent,
12 Sydney Tar Ponds Agency, if they have any undertakings
13 they wish to bring forward or any other points, and I
14 will ask if there are any other participants in the
15 hearings.

16 Mr. Potter.

17 MR. POTTER: Thank you, Madam Chair, we do
18 have four undertakings.

19 I think it's Undertaking No. 17, further
20 testing regarding pump testing data -- we'll pass that
21 along to the Secretariat, that we have some information
22 on that -- as well as No. 18, the amount of money spent
23 to date out of the 400 million.

24 We have one that is not recorded as an
25 undertaking, I believe in your records, but we had it as

1 an undertaking.

2 We discussed this a couple of times over
3 the past couple of days, and that's the incinerator
4 diagram.

5 So, we don't have a number for that, so --
6 but we will provide that information to you. And as well
7 we can report back from yesterday that the thermal
8 treatment unit that was asked about yesterday, we did
9 inquire. Apparently, there was a windmill that landed at
10 the SYSCO dock yesterday, was unloaded and shipped out of
11 -- off the SYSCO property, and that's, I suspect, what
12 the case was.

13 THE CHAIRPERSON: Okay. Thank you very
14 much.

15 Is there anybody else here present who
16 have an undertaking and wishes to put that on the record
17 and give it to the Secretariat?

18 Well, if not, I would like to turn to our
19 presentation of the day, Nova Scotia Environment and
20 Labour. We are pleased to have you with us, and you have
21 40 minutes for your presentation, followed by questions.

22 --- PRESENTATION BY NOVA SCOTIA ENVIRONMENT AND LABOUR

23 (DAVID BRIGGINS)

24 MR. BRIGGINS: Thank you, panel, for the
25 opportunity for Nova Scotia Environment and Labour to

1 make a presentation this morning.

2 I'd like to introduce the people at the
3 table.

4 First of all, my name is David Briggins,
5 and I'm representing the Environmental and Natural Areas
6 Management Division. And my co-presenter this morning is
7 Mr. Terry MacPherson, representing our Environmental
8 Monitoring and Compliance Division.

9 Also at the table to help answer questions
10 later on, beginning at my far left, Ms. Sharon Vervaet,
11 an Air Quality Specialist, Mr. Andrew Murphy, Manager of
12 our Air Quality branch, Mr. John Grace, a Groundwater
13 Specialist, and to Terry's right, Mr. Brent Baxter,
14 Manager of our Pollution Prevention branch, and Mr. Paul
15 Currie, a Contaminated Site Specialist.

16 First I'd just like to say that our
17 comments this morning are more of a summary, general in
18 nature. Due to the time that we have, we felt we
19 couldn't get into a lot of detail, so we'll keep our
20 initial comments at a higher level.

21 First, before I do that, though, I'd like
22 to just review very briefly our Department's mission,
23 which is to protect and promote the safety of people and
24 property, a healthy environment, employment rights, and
25 consumer interests.

1 Our environmental mandate is discharged
2 primarily through the Environment Act, and there are four
3 main areas of responsibility under that Act: water, air,
4 land, and environmental assessment.

5 In terms of the Department's mandate, Nova
6 Scotia Environment and Labour is the lead provincial
7 department for environmental protection and management,
8 and our responsibilities include, develop regular policy
9 guidelines and programs, oversee environmental monitoring
10 networks, manage databases and information, provide
11 sessional advice to public and government, and monitor
12 for compliance.

13 So, beginning in -- first of all, with the
14 Water and Wastewater Branch comments, and these are now
15 comments specific to the EIS, which has been thoroughly
16 reviewed.

17 The Water and Wastewater Branch is
18 responsible for four main areas: drinking water
19 management, groundwater management, surface water
20 management and waste water management.

21 Our first comment is that the remediation
22 project is expected to improve both groundwater and
23 surface water quality.

24 However, there are two aspects of the
25 Project that may have potential to negatively impact

1 water quality, which can be managed with mitigation
2 measures and monitoring.

3 The first aspect is, discharge of
4 contaminated groundwater pumped from trenches that could
5 affect surface water. This potential effect can be
6 managed by ensuring that water treatment systems are
7 property designed and monitored.

8 The second aspect for impacts on water
9 quality is the temporary storage of contaminated soil at
10 the proposed Victoria junction incinerator site, which
11 may affect groundwater.

12 That can be managed with a containment
13 system that prevents contaminants from leaching to
14 groundwater, both the containment system and groundwater
15 should be monitored.

16 Moving to air quality. The Air Quality
17 Branch is responsible for the management and protection
18 of ambient or outdoor air quality. It administers its
19 mandate through -- sorry, it fulfils its mandate through
20 administering the air quality regulations, which
21 regulates a variety of air pollutants, and it also
22 operates an ambient air monitoring network for regional
23 air quality, does not deal with site specific projects.

24 In general, the comments are in three
25 areas. The first one being the incinerator technology.

1 Both the proposed technologies have a history of use for
2 incineration of hazardous waste in a variety of
3 applications, and we feel that the details, whichever
4 technology is used will be dealt with through the
5 approval process under our activity designation
6 regulations, at a later date.

7 The second area is health effects of air
8 pollutants. The report identifies that particulate
9 matter in nitrogen oxide levels are predicted to be
10 periodically elevated, and these were absent from the
11 health risk assessment and need to be managed.

12 Also, levels for other air pollutants, for
13 example, sulphur dioxide, are also predicted to be
14 periodically elevated and will also require plans to
15 reduce emissions and exposure.

16 The third comment under air quality
17 relates to air monitoring requirements. An air
18 monitoring plan will need to include instrumentation
19 plans for continuous and periodic monitoring.

20 Parameters and criteria for air
21 contaminants will need to be spelled out. Timely
22 reporting and an appropriate response actions for
23 exceedances.

24 Under Pollution Prevention Branch
25 comments, first of all the Pollution Prevention Branch is

1 responsible for pollution prevention and green
2 procurement, reduction of toxic substances, management of
3 contaminated sites, dangerous goods and hazardous wastes,
4 pesticides and pests, and industrial emergency response
5 planning.

6 The first comment under pollution
7 prevention is that the Project is expected to reduce or
8 eliminate environmental impacts of contaminants through
9 appropriate site remediation or management actions.

10 Secondly, the Proponent, we believe, has
11 done sufficient site investigative work to provide the
12 basis for developing a remedial action plan.

13 The third comment is, that there needs to
14 be a standardized sequential approach to document the
15 site management plan, which includes remedial objectives,
16 a remedial action plan, a risk management plan, a
17 monitoring plan and a site closure plan.

18 The fourth comment pertains to containment
19 of contaminants, which we believe is an effective
20 approach if supported, by an integrated framework of
21 adequately designed, implemented and maintained
22 engineered controls, enforced institutional mechanisms
23 and effective site monitoring.

24 And the Proponent has provided general
25 information in support of a containment strategy;

1 however, more details are required prior to initiating
2 actual work to confirm adequacy.

3 So those are general comments from the
4 Environmental and Natural Areas Management Division.

5 I'd like at this time now to turn the
6 presentation over to Mr. Terry MacPherson.

7 --- PRESENTATION BY NOVA SCOTIA ENVIRONMENT AND LABOUR
8 (MR. TERRY MACPHERSON)

9 MR. MACPHERSON: Thanks David. I'd just
10 like to maybe give a little overview in terms of the
11 Environmental Monitoring and Compliance Division's role
12 with respect to the department overall, provincially, and
13 then maybe talk a little bit about our involvement with
14 the project in terms of the previous cost share
15 agreement.

16 Environmental Monitoring and Compliance
17 Division is responsible for the majority of field
18 operations relating to environmental protection.
19 Typically our activities include processing applications,
20 inspection and monitoring of approvals, enforcement
21 activities and response to public issues and complaints.

22 Our historical involvement with the
23 project since the late 1990s has primarily been
24 processing of approvals, involvement with sampling
25 programs or review of sampling information, review of

1 various reports that have been generated by the project.
2 And participation in committees, primarily committees
3 that would have -- the different Provincial and Federal
4 agencies that would have been involved with the project.

5 Some of the approvals that we were
6 involved with since the late 1990s would have been, for
7 example, the CBRM interceptor sewer project. And the new
8 sewage treatment plant that's now in operation at Battery
9 Point. We were involved with the review of application
10 materials and the approval of the closure program for the
11 former Sydney landfill facility. We also did approvals
12 up for the Coke Ovens above ground demolition work that
13 took place.

14 We did an approval up for the Domtar tank
15 demolition and removal. The project that's still ongoing
16 right now, the re-routing of Coke Ovens Brook and the
17 Victoria Road water main installation. And we're
18 currently reviewing information on the cooling pond
19 reclamation project.

20 So just -- this next slide just speaks a
21 little bit to some of the things that we look for when
22 we're reviewing an approval application. And normally
23 what we would look for from the Proponent for information
24 would be detailed engineering plans. A project
25 environmental management plan, that's sort of an all-

1 encompassing piece of information that would speak to
2 monitoring, exceedance response protocols, spell out
3 procedures for the contractor in terms of if you had a
4 trigger on site with an early warning system that the
5 contractor has an opportunity to modify what they're
6 doing and to bring themselves back into compliance.

7 We also look for -- and I think Mr. Kaiser
8 actually spoke to this on Saturday or Monday but they do
9 have a comprehensive occupational health and safety plan.
10 But the majority of that activity is addressed through
11 our sister division, occupational health and safety. And
12 outside of that, in our review process for approvals we
13 look for chain of command as well overall, who's
14 responsible for activity at the site. If we need to have
15 changes made.

16 Looking at the larger project for the
17 future, some of the triggers that we've identified under
18 the activities designation regulations would be, for
19 instance, the rerouting and control treatment of
20 groundwater and surface water. The excavation and
21 treatment of the PCB and PAH contaminated sediments and
22 soils. The destruction of PCB contaminated waste through
23 incineration, the in-situ solidification and
24 stabilization of the PAH contaminated sediments. Land
25 farming and bioremediation of surface soils.

1 There's going to be solid waste issues
2 outside of the hazardous waste issues regarding the
3 project and solid waste. So we'll be looking to have
4 information on that. It might trigger a separate
5 approval. The capping and containment systems that might
6 be used in the larger project, we'd be looking at that.
7 Decommissioning of infrastructure and the long-term site
8 monitoring and maintenance. And that pretty much wraps
9 up my portion of the presentation. Thank you.

10 THE CHAIRPERSON: So that is the end of
11 your presentation, is it. That's -- right.

12 MR. MACPHERSON: Yes.

13 NOVA SCOTIA ENVIRONMENT AND LABOUR

14 --- QUESTIONED BY THE JOINT REVIEW PANEL

15 THE CHAIRPERSON: And you still have
16 plenty of time left so had you wanted to get into more
17 detail you could have done but I'm sure we'll be able to
18 do that through discussion and questioning. So thank you
19 very much.

20 I would like to begin by asking if you can
21 help us out so that we can better understand this
22 approvals process or the regulatory -- the Provincial
23 Environmental Regulatory framework. I -- you've
24 indicated -- you listed proposed activities for approval.
25 And could you explain how many approvals you think that

1 your department will be involved in in giving and what
2 those will be. And give us just some kind of an overview
3 on how that will work.

4 MR. MACPHERSON: We've given some
5 consideration to trying to look at giving one a single
6 approval for the entire project. We haven't made any
7 firm decision on that as yet. Typically what we've been
8 doing in the past with some of the previous work that's
9 been going on in the watershed has been on a case by case
10 basis. So it was work going on in the Coke Oven site the
11 approval was issued for that particular operation.

12 Outside of that I think there are pros and
13 cons for an overarching approval. For example, the
14 benefit to having separate approvals, let's say
15 hypothetically there was one for an incinerator, a
16 separate approval for Coke Oven site and another one for
17 work going on in or near the north and south ponds, if
18 for some reason there was a problem or an issue with some
19 aspect of a project, let's say on Coke Oven site and work
20 had to, for some reason, stop, well if the approval was a
21 stand-alone for that site, then the Proponent could
22 actually perhaps stop work at Coke Oven site, go back and
23 evaluate what happened, do a debriefing with us and
24 during that evaluation period it wouldn't necessarily
25 mean that works in other parts of the watershed would end

1 up having to stop as well.

2 THE CHAIRPERSON: So when -- if a stop
3 order were issued, if there were a single approval does
4 that mean all work stops, all work covered by that
5 approval would stop if it were a single approval?

6 MR. MACPHERSON: Well, I can only say
7 this, that we could potentially do one approval but this
8 project is fairly unique in that we haven't really
9 tackled a project this size to -- and generate a single
10 approval to address all of the work that would have been
11 going on under one umbrella so we're going to have to
12 wait and see once the Proponent starts bringing their
13 detailed information in to us, just how we believe we're
14 going to be able to make it best work for us and for
15 them. And at the same time be cognizant of public health
16 protection and environmental protection.

17 THE CHAIRPERSON: You raised an issue I
18 did want to explore which was the size of the project and
19 its variance and resources and so on but if I can keep
20 going on the approval aspect, if you could help me out a
21 little bit as to what an approval under the Act consists
22 of, it's not a license as such. It's not a permit, is
23 it? When you issue an approval, it's an approval for a
24 specified amount of time and it's good until -- can you
25 rescind it? Is there any process to rescind it or is the

1 only process a stop order?

2 MR. MACPHERSON: No, we've had approvals
3 that have been rescinded. But generally speaking the
4 context of the approvals that we would issue under the
5 Environment Act would be for environmental protection.
6 And in most cases, we'll have a finite time line.

7 THE CHAIRPERSON: So you would anticipate
8 an approval carrying through till when, in this case?
9 Would you have one approval for the construction phase
10 and then a separate approval for the monitoring and
11 maintenance phase? And you're nodding so I'm going to
12 read into that that's a yes. Well, if the approval for
13 the monitoring and maintenance phase do you anticipate
14 that that would be -- have a fixed date on the end of it
15 or do you -- would you have some terms and conditions and
16 criteria that would need to be met before that would end?

17 MR. MACPHERSON: Typically for large
18 projects we -- the early approvals are for construction.
19 And generally that has a lot to do with the fact that the
20 Proponent can only generate a lot of this detailed design
21 information in certain stages. So generally it's --
22 construction would be the early part, then you would have
23 operation and then decommissioning. Our approvals right
24 now, the vast majority that we've been issuing for longer
25 time frames has just been a decade and then they go up

1 for renewal after a ten year period.

2 THE CHAIRPERSON: Turning to the issue of
3 the size of the project and the unique nature of the
4 project and experience that the department has, would you
5 like to reflect a little bit more on this? How much of a
6 challenge do you see this being to your department and do
7 you anticipate that this is going to require additional
8 resources?

9 MR. MACPHERSON: That's our plan. We're
10 looking to dedicate resources to the project in addition
11 to what we have right now. We'll also likely be looking
12 for partnerships with our Federal sister agencies in
13 terms of interpretation of policies or technical support
14 and we've also in the past, depending on the nature of
15 the project, actually sought out expertise outside of the
16 department in various areas of engineering or toxicology.

17 THE CHAIRPERSON: Do you anticipate that
18 where the Government of Canada has regulations dealing
19 with certain aspects of this project -- I'm thinking in
20 terms of incineration technology and the province does
21 not, do you anticipate perhaps harmonizing your
22 requirements with the Federal requirements?

23 MR. MACPHERSON: We haven't really made
24 any decisions as yet in terms of if we want to speak to
25 requirements, for instance being criteria that might be

1 applied to a stack emission. We haven't really made any
2 decisions as yet in terms of what criteria we would apply
3 to a stack emission but we would certainly be conferring
4 with our Federal partners in terms of what's there for
5 their policy and if they are there as a regulatory body
6 then we would always work to try and be as seamless as we
7 can so that it doesn't create an issue for the Proponent
8 in terms of doubling up on regulatory bodies.

9 THE CHAIRPERSON: We learned yesterday
10 that really there have been, in Canada, very little
11 experience with mobile PCB waste incinerators. And
12 we've, as an undertaking out -- we have two participants
13 in the hearings who have undertaken to provide more
14 information on one of those examples and so not that much
15 experience in Canada with that specific technology. More
16 experience, I guess, with respect to you know, permanent
17 fixed incinerators.

18 We also did explore with Environment
19 Canada the -- well, as we called it, the optics of the
20 situation where the proposal is the site or hazardous PCB
21 incinerator on what is now Federal land but it's going to
22 be -- and there is a certain level of regulation for this
23 kind of facility at the Federal level. But the land is
24 going to be -- the proposal is that it will be
25 transferred to the Province who does not have that level

1 of regulation and I believe we got some agreement that at
2 least the optics of that from a community perspective in
3 particular is that it was not the greatest.

4 I just wonder if you had any comments
5 about that and with respect to how the Province would
6 hope to be able to give the community some confidence
7 about the ability to regulate that technology in that
8 location?

9 MR. MACPHERSON: Well, I -- certainly we
10 -- there's no doubt in our mind that we are committed to
11 the project in terms of insuring compliance with any of
12 the approvals that we issue. But if we believe that for
13 some reason that we don't have the expertise within our
14 current operation in terms of review of material that
15 might be generated as a consequence of a submission from
16 the agency to us, then we will do that.

17 Outside of that, I think we have been
18 issuing approvals for the project since the late 1990s
19 and I believe we learned a lot in terms of the importance
20 of early warning systems, the importance of creating a
21 consciousness and a culture among the employees that are
22 actually doing the work and the importance of getting
23 information out into the community in a timely fashion
24 and I think we've been learning in the last five, six
25 years in terms of the right things to do and I'm hopeful

1 that we'll be able to continue to do that.

2 MR. MURPHY: If I could just add on to
3 that. It's Andrew Murphy. It's actually not uncommon
4 when we're dealing with approvals when there's a
5 particular area that we don't have regulations or
6 guidelines for that we would look outside the province
7 whether it's to other provinces, Federal Government or
8 even in other countries to see what kind of guidelines or
9 standards they might have in place and then use those to
10 inform what eventually happens in Nova Scotia.

11 THE CHAIRPERSON: Thank you. I have a
12 couple more questions then I'll let my colleagues get a
13 look in here. Could you perhaps tell us about the
14 department's experience with regulating incinerator
15 technology over the past -- I don't know how far back we
16 need to go back, ten, 20 years, something like that.
17 Just in general, what kind of projects have you -- have
18 there been in Nova Scotia and what has been your
19 experience and you referred to learning quite a bit over
20 the last five or six years. Have you learned something
21 from your experience with incinerators?

22 MR. MACPHERSON: Well, we did issue,
23 actually, an approval for this particular project back in
24 the -- I wasn't directly involved in that aspect of the
25 work but we did issue an approval for this project, I

1 believe it was in '92 or '93. But outside of that, at a
2 local level, we did have a municipal solid waste
3 incinerator working in the community. I believe -- I
4 wasn't directly involved with that particular project but
5 we do have some experience with it. Did you want me to
6 say any more than that?

7 THE CHAIRPERSON: Yes, by all means.

8 MR. MACPHERSON: Well, I -- for that
9 particular project I -- like I say, I can't say a whole
10 lot because I was not directly involved with it but I
11 will say that we did have some compliance issues with
12 respect to the local CBRM incinerator facility in the
13 last few years.

14 And my understanding, however was that the
15 issues were primarily connected with the feed stock. A
16 change in the feed stock with the facility as a
17 consequence of changes in the solid waste management
18 strategy that was brought across the province. That
19 particular operation is no longer functioning as well.

20 THE CHAIRPERSON: I'm going to -- just on
21 the subject of compliance and incinerators, I'm going to
22 put forward a possible concern that I could imagine that
23 people might have in this particular project which is
24 perversely because it's not going to be around very long,
25 the incinerator, it's a short operating period, there

1 could be a concern that maybe if there were compliance
2 problems, especially if the compliance problems weren't
3 all that severe, that there could be -- be assured, I am
4 just speculating that some people may have this concern.

5 I'm not saying this -- not the panel has a
6 concern, necessarily -- but that there could be -- there
7 might be a temptation shall we say that the -- just get
8 that -- those materials incinerated and get the
9 incinerator out of there because it's only meant to be
10 burning for short periods of time. Would you recognize
11 that that might be -- that people might have that
12 perception that there could be some real -- there might
13 be some temptations to be a little more lenient on
14 compliance and -- but how would you respond to that in
15 terms of the departments commitment to ensuring the
16 highest standards.

17 MR. MACPHERSON: We're going to hold --
18 we'll be holding that part of the project to a very high
19 standard and I don't -- I think if I could bring any
20 message to the community in that regard it would be that
21 we are going to -- whatever is -- we're going to
22 establish for a standard on that particular facility it
23 will be held to that standard and we will have staff
24 dedicated to the project.

25 They'll be out on the site on a daily

1 basis. We'll be reviewing -- monitoring records. And as
2 well, it's -- it'll be our understanding that should the
3 Proponent provide an application to the department for
4 use of an incineration device it'll be strictly for that
5 purpose only and for a finite time line.

6 THE CHAIRPERSON: I do promise my
7 colleagues I'm going to stop in a second. But just one
8 more thing related to this, where -- in terms of your
9 approvals and the information that you'll be receiving --
10 you see one of the things that -- one of the themes I
11 think that has emerged during the hearings is the stage
12 at which -- the design stage which we are conducting this
13 review and we're hearing fairly constantly that some
14 things haven't been decided or some things are -- may
15 change. A lot of reference to current thinking and so
16 on. So we know that -- and you know the level of detail
17 in some instances that has come before us has not been
18 all that great.

19 So we recognize that. So we know that
20 there's going to be a lot more detail required. You said
21 that yourselves. Is there -- when that detail about
22 various aspects of the project come forward to you for
23 approval is there any kind of public process that you,
24 within your approval regime or could there be if there
25 isn't right now, that allows the public to have a look at

1 some of these details maybe to make some comments?

2 MR. MACPHERSON: I was hoping that we
3 would get a lot of those issues addressed in this process
4 but I think we may sit down with the agency and try and
5 see if there are innovative ways to keep the public
6 informed. I do -- there is, as well, a functioning
7 Community Liaison Committee and that's been in operation
8 for some time now with the Sydney Tar Ponds Agency and
9 they may perhaps have a role to play in that respect as
10 well.

11 THE CHAIRPERSON: But within your
12 approvals you have the ability to make some -- to put
13 some requirements with respect to public access to
14 information and the ability -- I was thinking of the
15 ability for -- if the public wished to make some comment
16 on detail design to the department, not simply to the
17 agency. You have the ability to require that.

18 MR. MACPHERSON: We do but at this time
19 I'm not about to commit ourselves to something like that
20 but that, we have that latitude in the legislation.

21 THE CHAIRPERSON: And you, I'm sure, would
22 welcome -- be interested to see recommendations of the
23 panel through this process?

24 MR. MACPHERSON: Indeed.

25 THE CHAIRPERSON: I will now turn over the

1 questioning to my colleagues.

2 MR. CHARLES: I'm not sure there's much
3 left to cover but I'll do my best. I guess I have a few
4 questions about the approval process, particularly in
5 relation to the approval of engineering plans. I guess
6 the question is, do you -- when you're looking at the
7 engineering plans that are submitted for a project, do
8 you pass any judgment on whether the processes that are
9 being proposed, you know, whether it's bioremediation or
10 whether it's incineration or whether it's something else,
11 are appropriate, are the best technology. You know that
12 sort of thing. Or do you just accept what has been
13 proposed and see if it looks like it's workable from an
14 engineering point of view?

15 MR. MACPHERSON: I think a lot of the
16 processes that are being proposed by the agency are for
17 the most part, proven. But I think from the engineering
18 context and some of my cohorts here can step in if they
19 like, but I think it -- I think from an engineering
20 perspective I think that aspect of the review is --
21 speaks more to the fact that it meets the foundations of
22 engineering, fundamental engineering principles.

23 MR. BAXTER: It's Brent Baxter. Just to
24 give a little more to that, we would not necessarily
25 critique the particular proposal that came forward as

1 long as it met the performance requirements. So if
2 somebody was going to bioremediate or they were going to
3 use vapour extraction or do whatever to remove a
4 contaminant, as long as that particular technology met
5 that requirement, then that would meet our requirements.
6 But we would put specific performance criteria on that
7 application.

8 MR. CHARLES: Yeah, okay, that would be my
9 next question. When you talk about performance
10 requirements are you talking about the requirements that
11 would be imposed by applicable legislation or regulation?
12 And would you specify, for example, in the approval what
13 emission rates would have to be, that sort of thing for
14 -- from an incinerator or from anything else? Or would
15 you just say, as long as this meets whatever guidelines,
16 Provincial Air Regulations or whatever, it'll be okay or
17 do you get specific and say, you know, so many parts per
18 million and that's it?

19 MR. BAXTER: Generally we would get
20 specific. If you come along with a better technology
21 that can produce a better result, we would require you to
22 produce a product that would meet the extent of that
23 criteria. We would have a follow back usually that you
24 could only -- say, for instance PCBs, they're regulated
25 at 50 parts per million. But if you're going to treat

1 those through incineration or some other means we require
2 you to treat that at two parts per million. So you can't
3 just treat to below regulatory requirement. If you're
4 bringing in technology and doing something actively with
5 that you have to use it to the extent that that
6 technology is feasible and capable of doing that process.

7 MR. CHARLES: I guess I'm wondering about
8 -- for -- taking the incinerator just as an example,
9 there's been a lot of concern expressed about dioxins and
10 furans that come out the stack and that sort of thing.
11 Would you -- in the approval would you specify the level
12 to which the incinerator would have to operate with
13 regard to specific contaminants like that?

14 MR. MACPHERSON: Yes, the approval for the
15 incinerator would have very specific limits identified in
16 it.

17 MR. CHARLES: And if the Proponents
18 propose that incinerator -- if they do this -- by a
19 particular manufacturer, would you care who the
20 manufacturer was?

21 MR. MACPHERSON: No. We haven't been
22 putting those types of conditions on the agency. That
23 remains to be seen but no, we do not have any preference
24 one firm over another.

25 MR. CHARLES: I'm sorry I didn't get the

1 first part of your answer. You say you don't put that
2 kind of -- you don't specify or pass judgment ---

3 MR. MACPHERSON: We normally don't -- no,
4 we do not. We don't put those types of conditions. We
5 haven't been on the agency.

6 MR. CHARLES: All right. Thank you. I'm
7 speaking, you know, these are not trick questions. I'm
8 speaking from a relative base of ignorance here as far as
9 approvals are concerned. So I'm just trying to get some
10 information about how it works. I do have a question
11 about Environment and Labour's responsibilities with
12 regards to lands that are Federally owned such as the Tar
13 Ponds which are -- at least parts of them are Federally
14 owned. And maybe the VJ site. Does the department take
15 the position that they can -- their regulations and the
16 regulatory framework applies to Federal lands as well as
17 Provincial?

18 MR. MACPHERSON: We haven't traditionally
19 been applying our legislation to the federal lands, but
1 it would apply, for instance, on the boundary of the
2 federal property if it had environmental implications for
3 that boundary into the provincial jurisdiction.

4 MR. CHARLES: So you have not, in the
5 past, been applying it.

6 MR. MACPHERSON: Not that I'm aware of.

1 MR. CHARLES: Not that the Federal people
2 would be very happy about that, I don't suppose, but, as
3 a matter of course, you just don't do it.

4 There's a fair amount of discussion in
5 your presentation about the importance of monitoring and,
6 of course, we all realize how important that is.

7 When you're talking about approvals and
8 looking at the monitoring aspect of it, how much detail
9 do you expect to see in terms of monitoring plans? Is it
10 sufficient to have sort of a very general -- from your
11 point of view, a very general sort of overall plan? Or
12 are you looking for a very specific plan, you know, site
13 specific locations for monitors and whether hand-held
14 monitors will be used and with what frequency, that sort
15 of thing?

16 MR. MACPHERSON: I guess that's -- I'll go
17 back to a statement that I made earlier in terms of how
18 we were learning through our early approvals, and things
19 progressed later on with our involvement in the previous
20 cost-share agreement, and things are a lot different now.

21 We look for a lot of detail in the air
22 monitoring plans because air is really going to be one of
23 the biggest issues for the project, and so we're going to
24 look hard and be pressing the agency hard for monitoring
25 that allows for early warning, so that you're not going

1 to be getting exceedances out in the community air
2 monitoring stations.

3 There'll be lots of lead time for the
4 contractor to go back in there and modify what they're
5 doing to ensure that we're not -- we're going to minimize
6 and prevent air exceedances out in the residential areas.

7 MR. CHARLES: The proponent has, in the
8 EIS, and in subsequent Information Request responses,
9 given us a fair amount of detail about how they plan to
10 advise the public about the monitoring results, and
11 members of the public, as I understand it, they would be
12 very keen to see real-time monitoring results available
13 on the internet and other ways.

14 Does your department get involved in that
15 level of detail in terms of deciding just how the
16 information that comes from monitoring will be sent out
17 to interested parties?

18 MR. MACPHERSON: Oh yes, we got very
19 involved. We didn't really understand -- we knew that
20 there were individuals in the community that were also
21 asking for data, and in most cases that would be provided
22 to them, but we did have a contingent of residents arrive
23 in our office with three television networks on, I think
24 it was, a Wednesday or a Thursday morning one day in the
25 summer of 2004, I believe.

1 In any event, it was at that point that we
2 sat down with the agency and we explained to them that
3 the community really wanted to have that data, the air
4 data, when it's readily available to them. So it was
5 after that that the agency made a point of reporting.

6 In a lot of cases it was in the newspaper
7 if there had been an air exceedance, and the vast
8 majority of the data from that point forward was
9 available on the agency's website.

10 MR. CHARLES: You're talking about the Tar
11 Ponds Agency rather than ---

12 MR. MACPHERSON: Yes, sorry.

13 MR. CHARLES: --- any other agency. Okay.

14 And my last question is I want to be just
15 clear about this, I think you said in your presentation
16 that the department does not do on-site monitoring
17 itself. It relies on the proponent to do that.

18 MR. MACPHERSON: Yes.

19 DR. LAPIERRE: And is this a policy that's
20 dictated because of the lack of funds on the part of the
21 department, or is it just the idea that the proponent's
22 in the best position to do that sort of thing?

23 MR. MURPHY: It's certainly partially
24 that, the proponent's in the best position, but also we
25 think it would be their responsibility since it's their

1 project, and they should bear that cost, as well.

2 MR. CHARLES: I'm sorry, the last part,
3 you have responsibilities for ---

4 MR. MURPHY: No, that they should bear
5 that responsibility since it is their project.

6 MR. CHARLES: Sort of a user pay kind of
7 philosophy.

8 MR. MURPHY: That's right.

9 MR. CHARLES: Yes, okay. Thank you very
10 much.

11 MR. MACPHERSON: Do you mind, if I might
12 just add something to that, as well.

13 Traditionally the proponent, Sydney Tar
14 Ponds Agency, have been hiring outside firms to do that
15 work, private firms, and, as well, the sophistication and
16 cost and complexities in that technology now are such
17 that it would just be too much for the department to
18 tackle that.

19 And I think, in view of the fact were the
20 Tar Ponds Agency, since they are able to handle or are
21 able to retain an independent firm to do that work, it
22 gives us some comfort, as well, that -- in terms of the
23 reliability of the data.

24 MR. CHARLES: So just in terms of the
25 process, the agency gets an independent company to

1 actually do the monitoring. The independent agency
2 reports back to the Tar Ponds Agency? And then the
3 agency sends on the information to the department, is
4 that the way it works?

5 MR. MACPHERSON: Yes. Only in the event,
6 though, however, if there -- as a rule, the data, from
7 the point in time where it's gathered on the site to
8 where it might be tabulated and interpreted, there might
9 be a lag of a day or -- depending on the nature of the
10 data that they are collecting.

11 But outside of that, usually if it's an
12 exceedance, it's reported pretty much immediately to us,
13 and from that point forward they would be notifying us in
14 terms of what their action plan is to take steps to
15 ascertain what it was that caused the exceedance and what
16 they're doing to remedy the situation.

17 MR. CHARLES: So in terms of an
18 exceedance, you pretty much have to rely on the proponent
19 to come forward with the information on that score as
20 quickly as possible.

21 Is there any way that you can check on
22 that to see how they're doing? I mean, I know they're
23 people of good faith and everything, but you know what
24 the natural inclination is, that if something goes wrong,
25 if they see that "Gee, do we really have to report this?"

1 Maybe we can fix it and..." -- you know, kind of a lot of
2 paper work and stuff.

3 MR. MACPHERSON: There was or there has
4 been a process in place to date where there was a second
5 firm doing independent sort of quality QAQC work on the
6 primary firm that was collecting the data, so there was a
7 second opinion on it, and that was provided to us, as
8 well.

9 MR. CHARLES: Okay. That's all for now,
10 thanks.

11 DR. LAPIERRE: Thank you, and thank you
12 for the presentation.

13 I have a few questions as they relate to
14 groundwater. You indicated that groundwater was an
15 important issue with you. You indicated that air was
16 maybe the major one. However, in groundwater there are
17 -- I guess you must have reviewed the proposed methods
18 for managing groundwater on the site, you have the
19 drainage ditch system through the monolith which we were
20 made aware of, and I guess the question is do you
21 consider that to be an acceptable technology to manage
22 that groundwater in case there's going to be discharge
23 through that ditch that's going out to the ocean?

24 And I guess the second, since a large
25 portion of that monolith is going to be on federal land,

1 how would you propose applying your regulations to that
2 if you had a problem, or secondly how do you propose
3 harmonizing with the federal authorities who own the
4 land?

5 MR. DRAGE: I'll speak to the technical
6 side of that question, the ability for the proposed
7 trenches through the monolith to work in terms of
8 managing groundwater, and I'll ask my colleague to speak
9 about how we would work with the Federal Government on
10 the compliance side.

11 In terms of groundwater management
12 strategy, the trenches through the monolith are something
13 that's commonly used, groundwater diversion trenches or
14 interception trenches, so I believe that will work for
15 collection of both water that's coming up from underneath
16 the monolith and also if there is any leaching from the
17 monolith itself, although I would expect that to be very
18 minimal because of the proposed stabilization and
19 solidification technology. But I think that the trenches
20 would be able to intercept groundwater from both below
21 and if there was any coming from the monolith.

22 DR. LAPIERRE: So I gather you've assessed
23 the project as it now stands. There is a cap over the
24 monolith. However, that cap is a specific depth.

25 You have no concerns with three star

1 action on the bore holes with water being driven up from
2 the bottom of the monolith through the top and then
3 deterioration of the monolith with time?

4 You know, just looking at the water that
5 might come up, some of that water might be fresh water,
6 and a meter and a half of topsoil -- I would guess that
7 the frost step must go a little deeper than that in
8 Sydney.

9 MR. MACPHERSON: For the most part in Nova
10 Scotia the depth of frost that I've seen is maybe close
11 to that limit, but that would be about the limit, sort of
12 three feet or so, and the groundwater coming up from
13 below would typically be fairly warm.

14 Groundwater tends to be constant
15 temperature, maybe around 10 to 15 degrees Celsius, so I
16 wouldn't expect the water coming up from below the
17 monolith to be freezing.

18 DR. LAPIERRE: Okay. Do you have any
19 concerns, as you more than likely will be the owners of
20 the land, with time, if I understand correctly once the
21 land is stabilized it will revert to the Province, there
22 is, and I think will be, some continued exchange of
23 saltwater under the monolith with the harbour, do you
24 have any concerns with the potential leaching of the
25 contaminants, either from the contained sediments or

1 those that may be included in the monolith -- as a
2 responsible agent that would become your liability, would
3 it not be, if -- once you own the land, and do you have
4 any concerns with that?

5 MR. MACPHERSON: I'm just going to take a
6 step back from that question again for a second, but I
7 will come back to it.

8 With respect to the first part of your --
9 you had sort of a two-part question there early on, and
10 you asked about the overlap between different regulatory
11 bodies. I think what we're going to look to do there is
12 sit down with the other regulators and ensure that both
13 groups have a clear understanding of what the project is
14 doing and what the details are in that plan, and ensure
15 that we're trying to address that issue, that point that
16 you're making, so that if it's a jurisdictional issue for
17 us that we will address it through our approval process.

18 And I think that the liability and
19 management aspect of monitoring and maintenance, we're
20 looking more or less to have that issue addressed through
21 an approval process, as well. And assuming the ownership
22 is going to be transferred back to the province, then our
23 -- it would end up falling back under provincial
24 jurisdiction from a regulatory point of view.

25 DR. LAPIERRE: Okay. I have a few other

1 questions as they relate to transportation.

2 One of them relates to the railroad. We
3 understand that a railroad might be used for
4 transportation of the -- to and from the incinerator.

5 The question I have is who regulates that
6 railroad, if it's material transported within the
7 province?

8 I understand that you have your own
9 transportation. Now, would the transportation of
10 hazardous goods apply, do you have your own or when does
11 the federal kick in, and if it was a private railroad, do
12 you have any say on it?

13 MR. BAXTER: Basically, if the railway is
14 considered to be within the provincial boundaries and
15 doesn't go across jurisdictional borders, it's considered
16 to be a Nova Scotian railway. So certainly Cape Breton
17 Railway is considered to be a provincial railway, spur
18 lines are considered to be provincial authority's, as
19 well, and those would come under the jurisdiction of
20 Department of Transportation and Public Works.

21 Now, they do have regulations that mirror
22 the federal Transportation of Dangerous Goods
23 regulations, so criteria would be similar transportation
24 issues, but I would defer details of that to that
25 department.

1 DR. LAPIERRE: So they also would be the
2 ones who would permit any hazardous goods transportation,
3 it would be the Department of Transportation that does
4 that?

5 MR. MACPHERSON: Yes, it would, although
6 it would be up to the proponent to classify the waste.
7 That's the way the transportation of dangerous goods is
8 currently written, that there are criteria, but the
9 proponent must satisfy themselves that they meet that
10 criteria and classify it as such, and label it as such.

11 DR. LAPIERRE: For example, who would
12 classify the bottom ash in the incinerator as
13 transportable waste on public roads or classify it as
14 hazardous waste if it needed to be classified, which
15 department does that?

16 MR. MACPHERSON: The proponent would
17 actually classify it but the department would be
18 responsible for the regulatory enforcement of that
19 classification, so they would be probably checking with
20 the proponent to make sure that the material is properly
21 tested and reported.

22 DR. LAPIERRE: So what tests do you
23 require on waste to ensure that it's not hazardous? Do
24 you require any leachate type testing or do you have
25 regulations on classifying hazardous waste within the

1 province?

2 MR. MACPHERSON: Yes, we do. As I
3 mentioned earlier, there are provincial regulations for
4 transportation of dangerous goods that mirror the federal
5 regulations, and they would require it to be tested for
6 all the regular criteria such as flammability,
7 leachability, toxicity, those sorts of tests.

8 DR. LAPIERRE: And do you administer those
9 regulations?

10 MR. MACPHERSON: No, that's actually the
11 provincial Department of Transportation and Public Works.

12 DR. LAPIERRE: Okay. Under the discharge
13 of water, because water would be going to a treatment
14 system and then discharged to a body, what regulations do
15 you use or apply when discharging waste water? Do you
16 have waste water treatment guidelines with specific end
17 points as to what you can release from a treatment
18 system?

19 MR. MACPHERSON: With respect to the
20 groundwater and surface water treatment and discharge, at
21 this time we're looking right now to incorporate the
22 conditions for the criteria for the discharge within the
23 approval that would be for, say, specifically for Coke
24 Ovens Site, but we haven't made any definitive decisions
25 as yet in terms of what the criteria's going to look

1 like, what the expectation is for the treated discharge
2 numbers.

3 DR. LAPIERRE: So they could be site
4 specific numbers for the project, very specific discharge
5 rates for this type of project. Or would you ensure that
6 they meet, for example, the federal guidelines of
7 discharging into a water body under the Fisheries Act
8 section 36?

9 MR. MACPHERSON: I'm speaking off the top
10 of my head here right now, but I think what we would do
11 is we would be asking -- the Tar Ponds Agency would be
12 providing details to us in terms of what their plans are,
13 what the treatment design is, and I think part of our
14 review and sort of determination as to what the treatment
15 -- the expectations for the treated criteria is going to
16 look like, would include some consultation with our
17 federal cohorts in terms of Department of Fisheries,
18 Environment Canada, Health Canada.

19 DR. LAPIERRE: And another question, does
20 the Grand Lake area or watershed currently have any
21 status as a protected water supply, or Kilkenny Lake?
22 Are they part of a plan, are they presently included, or
23 are you considering including them in a watershed
24 management legislation?

25 MR. BRIGGINS: No, currently the Kilkenny

1 Lake is not a protected water supply. However, it is
2 part of -- feeds into a municipal water supply system,
3 and they do have a source water protection plan in place.
4 So it doesn't have to be designated to be protected.

5 DR. LAPIERRE: So who enforces those
6 protection guidelines or bylaws? Is it your department?

7 MR. BRIGGINS: Yes.

8 DR. LAPIERRE: Or is it the municipal
9 responsibility?

10 MR. BRIGGINS: Again, this is an approval
11 through our department that would be issued for the
12 municipal water supply, and we audit but they do the
13 monitoring and the planning.

14 DR. LAPIERRE: Okay. And I guess my final
15 question relates on the last question that Bill Charles,
16 my colleague, asked.

17 Would you be adverse to having a third
18 party auditing of the monitoring procedures? You know,
19 given the scepticism and concerns that citizens have in
20 the community, there might be some level of comfort to
21 know that there is a third party.

22 I understand that you indicated that the
23 agency might get, you know, an independent consultant,
24 but if I hired the consultant, I mean, I could be seen as
25 close looped to that consultant. Would you be adverse to

1 a totally independent third party group that would audit
2 the results that come forth from the monitoring?

3 MR. MACPHERSON: We have that option, and
4 it -- there have been derivations of that particular type
5 of review been done in the past, and I'm not going to --
6 I'd rather not commit to that but I'll only say that
7 we'll take it under consideration.

8 DR. LAPIERRE: Okay. Thank you.

9 MR. CHARLES: I've already established
10 myself as being a person interested in railroads, so I
11 have a follow-up question on the railroad.

12 The plan is to transport a lot of the --
13 most of the sediment from the tar ponds out to the
14 incinerator by rail, and the proponent has estimated a
15 trainload once a day going outward, anyhow, with 38 to 40
16 cars. Now, even after de-watering, that sediment is
17 going to be pretty heavy, so you're going to have a
18 fairly heavy load on the rail line.

19 I guess my question is, I don't know
20 whether it falls within your jurisdiction to make sure
21 that the rail line itself and the bedrock and so on, the
22 ties, the rails and so on, are in good condition.

23 We've heard about what happens in BC with
24 trains falling into the lakes, and I can understand how
25 the people around Grand Lake would be a bit concerned

1 about this heavy traffic going by the lake.

2 Would protection, from that point of view,
3 in terms of making sure the road bed or the rail bed is
4 in good shape, be your department, or would it be
5 Transport Department's responsibility?

6 MR. BAXTER: That would be Transportation
7 and Public Works.

8 DR. LAPIERRE: So we'll wait for them this
9 afternoon or whenever we get to them.

10 What about contingency plans in case such
11 a spill were to occur, is it their responsibility, too?

12 MR. BAXTER: That would be a joint
13 responsibility there.

14 MR. CHARLES: A joint responsibility in
15 that case.

16 MR. BAXTER: Yes.

17 MR. CHARLES: And you'd be looking for
18 some fairly detailed plan. I think it's been mentioned
19 in the EIS that the proponent has plans to develop such a
20 plan or has, in fact, a plan already. So you would be
21 interested in that.

22 MR. BAXTER: Certainly in a significant
23 amount of detail, particularly with the history over the
24 last year of some of the rail accidents in the west.

25 MR. CHARLES: Okay. To come back to

1 monitoring for just a moment because, in your
2 presentation, you indicated that monitoring beyond 25
3 years may be required as a commitment by the proponent.

4 Now, we don't have complete design details
5 at this stage, but did you have any basis for making that
6 statement? I mean, have you any reason to think that
7 monitoring would be needed beyond the 25 years?

8 MR. DRAGE: Yes, that was a comment that I
9 made on the EIS, but a timeframe of 25 years could
10 possibly not be enough, and the basis of that comment was
11 the nature of the chemicals in the ground. They take a
12 long time to degrade, so without seeing any calculations
13 to demonstrate that they'll be degraded sufficiently by
14 then, I think it's reasonable to plan for a longer
15 monitoring period.

16 MR. CHARLES: So it's a suggestion based
17 on prudence, as far as you're concerned. It would be
18 prudent to do this.

19 MR. DRAGE: That is correct. It would be
20 a precaution to plan to have to monitor beyond 25 years.

21 MR. CHARLES: And have you any idea who
22 would pay for that monitoring, because I think the
23 Memorandum of Agreement talks about a 25-year plan or
24 timeframe for the project. Would that fall to the
25 department to pay for that monitoring, or would you

1 expect the proponent to pay for it?

2 MR. MACPHERSON: I think we would look --
3 assuming that the property would still be under
4 provincial ownership, we would try to incorporate that in
5 the approval process. And the proponent would be -- the
6 province in some capacity would be paying for it, but not
7 necessarily our department.

8 MR. CHARLES: All right. Thank you very
9 much.

10 THE CHAIRPERSON: I'm sure you're looking
11 forward to a break, probably, as is everybody else in the
12 room, but hang on.

13 I just have a few questions. The first
14 one is I'd like to just talk about air quality for a
15 moment, and this is a general question, and it's really
16 have you any -- if you could give me an idea of -- quite
17 apart from the project, past activities, proposed
18 activities, what are the air quality issues in the Sydney
19 area right now, what are the things that, as a
20 department, you're keeping an eye on?

21 MR. MURPHY: We've been monitoring air
22 quality in Sydney for a number of years, and we haven't
23 seen any exceedances in recent history that have caused
24 us concern.

25 We have a monitor that's intended to

1 represent generally the air quality in Sydney. It
2 doesn't monitor for any specific projects such as the
3 ones that have occurred around the Tar Ponds, but, in
4 answer to your question, air quality is generally good in
5 Sydney.

6 THE CHAIRPERSON: So coal burning, the
7 fact that there's probably a higher incidence with
8 domestic coal burning is not showing up?

9 MR. MURPHY: It hasn't shown up to any
10 significant degree in our monitor, no.

11 THE CHAIRPERSON: Thank you.

12 Next question following on from Dr.
13 LaPierre, just so that I'm clear, he was asking questions
14 particularly with respect to the transportation of
15 dangerous goods, and my question relates to do you see
16 any requirement to be involved, for the department to be
17 involved, with respect of the disposal of hazardous
18 waste, other than the materials going from the Tar Ponds
19 to the incinerator, and that's an obvious one.

20 I'm coming back to this bottom ash issue.
21 It's -- the proponent's indicated that they plan to test
22 the bottom ash for PCBs only, I think, in order to
23 confirm that they have -- that there are no PCBs in
24 excess of 50 ppm, we should hope not.

25 But we've also been told that the process

1 will tend to raise the concentrations of metals in the
2 bottom ash up to -- because the bottom ash is being used
3 to bulk the sediments and that that will -- we've
4 received good clear information about that and the fact
5 that at a certain point the levels of metals will become
6 stable but at a higher level. And you've seen that
7 information, I'm sure.

8 Is there any possibility that you can see
9 that, in fact, the bottom ash might -- levels might reach
10 a point where it might be considered hazardous waste and
11 therefore you would have some involvements with respect
12 to it being -- going back to the Tar Ponds?

13 MR. BAXTER: There's always a possibility
14 that that would occur, and, in that case, we would
15 require the proponent to either dispose of that material
16 at an approved facility or to treat the material to
17 reduce that hazardous characteristic below the regulatory
18 requirement.

19 THE CHAIRPERSON: Did the information that
20 was provided by the proponents -- we have it in one of
21 our Information Requests or their response to it, you've
22 seen that, have you? I can cite it, but you've seen it.

23 MR. BAXTER: Yes.

24 THE CHAIRPERSON: When you looked at that
25 table, any red flags or even pink flags?

1 MR. BAXTER: We do require some more
2 information. There seem to be some gaps in the current
3 information, but it's still evolving.

4 THE CHAIRPERSON: But nothing that said to
5 you -- the proponent's got -- they have put forward their
6 rationale, a lot of which -- you know, I understand what
7 rationale is, I just need to get the department's
8 perspective.

9 The rationale is that the metals came out
10 of the Tar Ponds, they haven't been added to, they're
11 just going back to where they came from, and they are
12 going to be solidified and stabilized, so that's fine.
13 But from a regulatory perspective, there's -- do you feel
14 that, in fact, you could -- you are able to respond to
15 that rationale or are you fairly confident, anyway, it's
16 not going to become an issue from a regulatory
17 perspective in the disposal of that bottom ash?

18 MR. MACPHERSON: It would certainly have
19 to be one of the factors that was considered.

20 One thing that is working well with this
21 particular proposal in the final disposal of the material
22 is solidification and stabilization, which would reduce
23 the leachability characteristic of a hazardous waste if
24 it was one, particularly with metals.

25 So although we're looking at using, as you

1 mentioned, solidification and stabilization primarily for
2 the organic type material, it would also work as well on
3 the inorganic component.

4 THE CHAIRPERSON: Yes, but that is the
5 disposal option. Your regulations, if you have to
6 regulate a hazardous waste going to disposal option --
7 never mind, I think I'm going go circular here. All
8 right. That's fine.

9 Is there some regulatory involvement with
10 respect to the creation of the -- the potential creation
11 of a non-hazardous waste landfill on the site?

12 MR. MACPHERSON: My suspicions are that if
13 it was non-hazardous, while if it was something that met
14 the criteria for disposal in the second generation site
15 or a nearby construction and demolition site, that they
16 could just go there with the material, as long as it met
17 the -- I'm speaking more to the general solid waste
18 issues outside of the soil treatment and the specifics in
19 terms of solidification, stabilization, that sort of
20 thing.

21 THE CHAIRPERSON: And the proponents
22 indicated in their plans that they've -- I shouldn't say
23 more than likely but that they may well need to create a
24 non-hazardous waste landfill on the Coke Oven Sites, not
25 -- sorry, maybe I didn't hear you properly, not sending

1 stuff off to a C&D site.

2 MR. MACPHERSON: No, I'm sorry, I didn't
3 understand your first question, but we would look to --
4 if that was their plan, we would look for details and
5 incorporate that in an approval for whatever
6 specifications for lining or capping materials and that
7 sort of thing, but that would be addressed in the
8 approval process.

9 THE CHAIRPERSON: And finally my last
10 question for you right now refers to the ongoing status
11 of the Tar Ponds and Coke Ovens Sites, they -- well,
12 here's the question, will they remain -- in the official
13 view of the department, since there will still be
14 contaminants on site, albeit stabilized, solidified and
15 capped in one case and capped in the other case, will
16 those, in fact, still be contaminated sites?

17 MR. MACPHERSON: We haven't made that
18 determination to date. Certainly those sites would be
19 considered to be managed sites, and there would be some
20 long-term management requirements placed on those.

21 THE CHAIRPERSON: And then -- now, I would
22 assume, I mean, the goal of the project, one of the goals
23 of the project is for there to be future use on the
24 sites, obviously, and so I am interested if you can tell
25 me from a legal perspective what happens to liability,

1 who holds the liability on those sites?

2 So you've got -- now, we've been told that
3 the sites will -- the federal sites will be handed over
4 to the province, the VJ site if that's used will -- the
5 proposal is that that becomes provincial property before
6 the incinerator's sited there.

7 In the instances of the federal land and
8 the Tar Ponds, which is, you know, most of the Tar Ponds,
9 that that will, at the end of the construction will be --
10 if I'm getting this wrong, I know we'll hear back, they
11 will clarify this, but at the end of the construction
12 period that that will go to the province.

13 It's possible that in terms of long-term
14 future use that there may be a wish to try and transfer
15 some of that land from the province to the municipality.
16 There may be a wish to try and sell off some of the land.
17 What happens to the liability in that case? Does it
18 transfer with the land? Is the Federal Government going
19 to keep some liability for the tar ponds even if the
20 province takes it over?

21 MR. BAXTER: Right now, under our
22 legislation, as well as federal legislation, there is no
23 ability to transfer or extinguish liability. So if
24 you're involved in the property, either were involved,
25 are involved or will be involved, certainly you can be

1 called as a responsible person under the Act.

2 There are some changes perhaps coming
3 nationally as well as provincially with regards to
4 liability, but right now, if you're an involved party you
5 would stay as an involved party.

6 THE CHAIRPERSON: If I were to end up
7 owning a piece of the land in the future and, heaven
8 forbid, something happened, contaminants started to move
9 again, and I were sued, can I sue the Provincial
10 Government, can I sue the Federal Government?

11 MR. BAXTER: Certainly I'm not a lawyer
12 but in my experience in what I've dealt with both
13 provincially, nationally, looking at liability associated
14 with contaminated sites, there is no extinguishment of
15 civil liability, so that's always an option.

16 And the defence to that is that the
17 person, at the time, used the best available technology,
18 took all proper precautions, essentially did due
19 diligence, and that whatever happened wasn't reasonably
20 expected to occur.

21 THE CHAIRPERSON: I can see that I'm
22 delving into deep waters on this subject, so I think --
23 let's take a break. So it is -- thank you very much.

24 Now, if you don't mind, when we come back
25 -- don't go anywhere but we'll have to make a decision

1 how we're going to use the time, and I know we have our
2 next presenter in the wings. Obviously we've taken up
3 all of this question time, and I'm sure people in the
4 audience were not pleased about that, so we have to find
5 some time for them. So we will talk about that over the
6 break and come back and make some suggestions about how
7 to make sure that adequate questioning time is provided.

8 We will return at quarter to 11:00.

9 --- RECESS: 10:25 A.M.

10 --- RESUME: 11:00 A.M.

11 THE CHAIRPERSON: Ladies and gentlemen, we
12 will resume the session. What the Panel is -- has
13 decided to do, with the cooperation with -- of the
14 presenters, is that we -- as you can tell, Environment
15 and Labour is sitting back down.

16 So, we are going to take about an hour for
17 questions from other participants and then the medical
18 officer of health is going to make his presentation
19 before lunch and then we'll come back with some questions
20 on his presentation after lunch. So, that's the
21 decision, so we now have about an hour.

22 Let me just remind -- or not remind --
23 nobody needs any reminders, but the people -- anybody
24 here who hasn't been present for any of the other
25 sessions, the way we handle the questions is that I have

1 a roster of registered participants and together with the
2 Proponent, Sydney Tar Ponds Agency, the registered
3 participants do have priority in terms of asking
4 questions, but once they've had a chance to ask questions
5 I do also ask for -- if there's anybody else who's not a
6 registered participant who's got a question for the
7 presenter.

8 Let me emphasize these are questions with
9 as little -- you always need to give some context, I know
10 that, but keep the context and the statements to absolute
11 minimum, please, and let's keep the focus on trying to
12 see if we can obtain some more information and some more
13 commentary from the presenter. So, that's the way we do
14 it.

15 I am -- first of all, I will -- I'll turn
16 directly to the Proponent to see if they have any
17 questions of the Department of Environment and Labour or
18 if they have any points of clarification relating to
19 questions that the Panel asked and answers that we
20 received. So, Mr. Potter?

21 MR. POTTER: Thank you, Madam Chair. Not
22 really any questions right now, just a clarification
23 point, I guess. We are talking a lot about the detailed
24 design stage and I think everybody appreciates right now
25 we have a conceptual design moving to a detailed design.

1 We, historically, have worked very closely
2 with the regulators, including DEO, to develop those
3 detailed engineering designs. We do have -- and I'm not
4 sure if it's been mentioned yet, but we have a -- within
5 the process we have a technical working group, which is a
6 structured committee where provincial regulators and
7 federal regulators all get together and do get updated on
8 the project.

9 As the project progresses that's going to
10 become, I think, a much more busier committee than it has
11 been in the past, because we haven't had a lot of
12 activity, of course, but it is a formal, structured
13 committee that does exist within the existing
14 organization that we have for the project.

15 On top of that, we also have the
16 independent engineer that's been discussed in the past.
17 They do have a role ensuring -- to review the detailed
18 design engineering aspects as it progresses. So, I just
19 wanted to hit some of those highlights and clarify a few
20 of those points. Thank you.

21 THE CHAIRPERSON: Does the independent
22 engineer have a role in doing quality control or any kind
23 of role with respect to monitoring?

24 MR. POTTER: Yes, he has a role to play, a
25 major oversight, QA/QC review of all major engineering

1 components. He doesn't -- he will not redesign the
2 entire project but he will look at the project and say,
3 "Here are the key elements that have to be successful,"
4 they will then go back and they will redo the engineering
5 to confirm that if it's a structural component they will
6 re-review -- recomplete the calculations in detail on
7 very selected components, like I say, not the entire
8 project.

9 But they have a fairly rigorous mandate
10 over the eight-year period, as was indicated by Public
11 Works and Government Services Canada. They have a \$12
12 million dollar contract over that period of time to carry
13 that work out. So, it's a fairly major amount of
14 engineering review.

15 THE CHAIRPERSON: And does the mandate of
16 the -- I'm sorry, I'll stop in a second. But is the
17 mandate of the independent engineer -- so far we've been
18 presented with the agreement, the Panel has been
19 presented with the agreement by Public Works and
20 Government Services Canada.

21 Is there more -- is there another document
22 that's publicly available that lays out in perhaps some
23 detail what the role of the independent engineer is?

24 MR. POTTER: The independent engineer is
25 currently completing the compilation of the independent

1 engineer's operating manual. It will clearly spell out
2 all the details of their role. That's still in draft
3 stage right now? Yes.

4 THE CHAIRPERSON: Is there something
5 shorter than the manual?

6 MR. POTTER: I don't believe. It's
7 getting thick.

8 THE CHAIRPERSON: I'm not going to ask for
9 the manual. So, if we have more questions we'll ask them
10 verbally. Thank you very much.

11 I'm now going to, first of all, ask if
12 there are any representatives of any of the three levels
13 of government, federal, provincial or municipal, who are
14 present who have a question for the Department of
15 Environment and Labour.

16 I would then -- I think the simplest thing
17 is those of you who are registered participants, because
18 you're going to make a presentation later on and you'll
19 know who you are now -- could I just see a show of hands
20 of how many have questions? Mr. Marmon, Ms. MacLellan.
21 I can see a hand, I can't see the body attached. Mr.
22 Ignasiak. So, one, two, three -- five, yes. Okay.

23 I think we'll start off with -- six, all
24 registered participants. Oh, yes, I'm definitely going
25 to ask for the public.

1 So, yes, I have at least one public. But
2 perhaps I'll ask right now how many members of the public
3 would like to bring questions forward to the presenter,
4 then I'll have some idea.

5 Well, if you're registered, you're
6 registered. So, public? So, do I have two? I'm just
7 trying to get a sense of the total number of people.

8 I think what I'm going to do is start off
9 by -- I'll start off with the registered participants and
10 I'll ask you to maybe ask two questions and keep them as
11 fairly brief as you can and then we'll do a round and
12 then we'll get on to the public so everyone gets a
13 chance.

14 I'm going to start with Mr. Ignasiak.
15 That's purely arbitrary. I'll continue to be arbitrary
16 today probably.

17 --- QUESTIONED BY MR. LES IGNASIAK

18 MR. IGNASIAK: Thank you, Madam Chair.
19 One of the members of the Nova Scotia Department of
20 Environment and Labour made a statement that the STPA is
21 meeting the due diligence requirements through selection
22 of the best remedial technology available at this time.

23 On this basis any legal challenge in
24 response to spreading the contamination from the
25 remediated site would not succeed. That's my

1 understanding. Well, there are other options, technology
2 trends, that I think would be much more effective for
3 Sydney Tar Ponds remediation.

4 My question is, has the STPA asked the
5 Nova Scotia Department of Environment to review such
6 options and provide some evaluation regarding the
7 suitability of those options? That's the first question.

8 MR. BAXTER: I'll answer that, if I may.
9 Basically, we don't normally challenge a particular
10 technology that a Proponent brings forward unless it will
11 clearly not work, because there may be other factors at
12 work regarding economics, regarding suitability for
13 particular sites, regarding availability of equipment or
14 personnel that we may not be aware of.

15 So, what we do is we work within what a
16 Proponent submits and make sure that that is capable of
17 meeting our requirements and strictly limit ourselves to
18 what is submitted to us.

19 THE CHAIRPERSON: And for clarification,
20 was the -- excuse me, I think it may help. Was the
21 department involved in the evaluation of the RAER options
22 and then subsequently the government-generated options?

23 MR. MACPHERSON: Not really, no. That was
24 all primarily through the JAG process.

25 MR. IGNASIAK: Thank you very much. I

1 have another quick question. I have in front of me the
2 final technical evaluation of Sydney Tar Ponds [---]
3 demonstration run by Vogue (sic) Engineering and I am
4 looking at Table 1.4 of this document which shows the
5 leachability criteria for the technology demonstration
6 program.

7 I cannot find any criteria for leaching
8 the PCBs, and as you may be aware leachability tests were
9 recently conducted for solidified samples of the sediment
10 and those results are available.

11 Have you thought how you are going to
12 evaluate those results if you don't have the criteria?
13 And this is everything. Thank you.

14 MR. MACPHERSON: I'm not convinced this is
15 necessarily the answer Mr. Ignasiak is looking for, but
16 at this point in time we are still waiting for more
17 details from the Agency on exactly what's going to take
18 place in this technology in terms of solidification/
19 stabilization. So, we're still waiting on more
20 information on that aspect of the project.

21 I don't know if Brent wants to add any
22 more to that or not.

23 THE CHAIRPERSON: Mr. Ignasiak, do you ---

24 MR. IGNASIAK: Thank you very much. For
25 the time being that really is perfect for me.

1 THE CHAIRPERSON: Okay. Good. Thank you
2 very much. Ms. Ouellette?

3 --- QUESTIONED BY MS. DEBBIE OUELLETTE

4 MS. OUELLETTE: Hi, my name is Debbie
5 Ouellette, a former Frederick Street resident. I just
6 want to point out, Mrs. Chair, that the information
7 provided today was not on the site for us to look at, so
8 it's pretty hard to get questions prepared if we don't
9 see it, even if it's on the site.

10 Like for this presentation this morning or
11 for the one this afternoon I checked on my computer at
12 10:30 last night as well as this morning and it wasn't
13 published yet. So ---

14 THE CHAIRPERSON: Yes. Thank you for that
15 comment. We have definitely encouraged, as you know, in
16 our procedures and verbally by me, that any presenters do
17 bring their presentations forward, and all I can do is to
18 continue to encourage that and I will make a note of your
19 comment.

20 MS. OUELLETTE: Okay. And as for
21 clarification, the question that I asked yesterday to
22 Health Canada, are they going to come back with my
23 answer?

24 THE CHAIRPERSON: You'd better remind me.

25 MS. OUELLETTE: The one that I asked about

1 the health effects that were on the Coke Ovens Site when
2 the workers weren't wearing protective equipment, they
3 did have health effects that were there because they were
4 not wearing their equipment, and I just wanted a list of
5 what the health risks were to them. I do have it here if
6 you want me to re-read it.

7 THE CHAIRPERSON: The request, I will need
8 somebody to remind me if that was, in fact, taken as an
9 official undertaking.

10 MS. OUELLETTE: Yeah.

11 THE CHAIRPERSON: So, just a second,
12 please. We are going to make the necessary checks to see
13 what the status of the request was that we'd noted, and
14 we will get back to you, I promise.

15 MS. OUELLETTE: Thank you. Okay. And I
16 would like to go -- I'd like to go back to 1998. In
17 March we had a contractor that started work on the Coke
18 Ovens Site. The residents that lived closest to the site
19 were not informed beforehand.

20 In June we had complained so much that the
21 work -- the emissions that came off the Coke Ovens Site,
22 we were getting sick. So, the work was stopped. In
23 December the same contractor, after seven months of not
24 doing the work, was paid over four hundred thousand
25 dollars (\$400,000) for doing nothing.

1 I just want to know since that time are
2 there any clauses in the contracts that if work is
3 stopped for any reason other than like residents getting
4 sick or there's too many emissions coming off the site,
5 are the contractors still going to get paid for the work
6 they're not doing?

7 THE CHAIRPERSON: I'm going to look at
8 Environment and Labour. I think that's not a question
9 that goes directly to them.

10 MS. OUELLETTE: Okay. I wasn't sure where
11 to ask this because ---

12 THE CHAIRPERSON: Would you like to
13 confirm that? Do you have any say in this?

14 MR. MACPHERSON: The only knowledge I have
15 of that is it is an issue for Tar Ponds Agency for
16 standby time and that's why it's so important that the
17 contractors are well aware of the procedures that are
18 required, if there was, for instance, a trigger on a
19 hand-held instrument that they need to modify what
20 they're doing for work and to get themselves below that
21 trigger value on the instrument.

22 It does boil down to standby time. If, in
23 the event that the activity for that day or a number of
24 days gets postponed, there are contingencies built into
25 the contract for that matter, but it's really best

1 answered by the Agency.

2 THE CHAIRPERSON: Well, just so that we
3 can wrap it up, I will ask the Agency if you'd like to
4 make a quick comment on this, please.

5 MR. POTTER: Maybe if I could just get the
6 question rephrased again, just so I'm clear on it.

7 MS. OUELLETTE: My question is, like when
8 you have your engineers and contractors that come on the
9 site and for some reason work is stopped because of
10 emissions or residents are complaining they're getting
11 sick that live close to these sites, in that contract are
12 there clauses that say that if they are stopped for any
13 reason will they still get paid for doing the job or paid
14 for not?

15 MR. POTTER: In the contracts we issue now
16 on the projects that we've undertaken in the past few
17 years we, first of all, place the onus on the contractor
18 to meet all of the regulatory permit stipulations that we
19 receive from the various regulators.

20 Hence, the contractor himself has to be
21 doing his own form of monitoring on site with his own
22 hand-held instruments checking for things as well, for
23 wind speed and things like that, which was, as you know,
24 the problem back in 1998.

25 MS. OUELLETTE: Um-hmm.

1 MR. POTTER: Our contracts are very
2 specific now. The contractor has to meet those
3 performance requirements, he understands if he doesn't
4 meet those performance requirements we stop him.

5 MS. OUELLETTE: Okay. And I wanted to
6 clarify to you, Mrs. Chair, that in June when the
7 contractor did work on the Coke Ovens Site air monitors
8 were placed on my property and the adjacent property and
9 between June and September they were not on at any time
10 while work was taking place. That's why I have an issue
11 with air monitors.

12 They were on maybe for a 24-hour period,
13 that was it, and for that reason -- I know this, because
14 they would have to be plugged into my basement to receive
15 power. So, that's why I'm just saying air monitors and
16 real-time air monitors are a concern for me, like when
17 they're going to be on.

18 I really want to know if they're going to
19 be on for six days a week, seven days, you know, for 24-
20 hour periods, or are they just going to be on for an hour
21 a day, which there's 23 more hours in that day that they
22 pick up nothing.

23 THE CHAIRPERSON: Perhaps that can be now
24 directed as a question to Environment and Labour. What
25 kind of -- well, would you like to comment on that

1 concern?

2 MR. MACPHERSON: I can only say this.
3 What I read into the question is more so to do with the
4 fact of residents being told -- are being given
5 information on when monitors are running, where they're
6 located, frequency of monitoring criteria, that sort of
7 thing.

8 And we talked about it earlier and I guess
9 we'll be looking for the Agency to perhaps come up with
10 innovative ways to get that information out into the
11 community, and I think there's a lot available on their
12 website now, but if we can take it another step beyond
13 that then so be it.

14 THE CHAIRPERSON: Thank you. Thank you,
15 Ms. Ouellette.

16 MS. OUELLETTE: Thank you.

17 THE CHAIRPERSON: It does occur to me that
18 you providing the power through your basement is a form
19 of citizen oversight of the monitoring, isn't it? But
20 anyway ---

21 MS. OUELLETTE: That's why I have a lot of
22 concerns with air monitors.

23 THE CHAIRPERSON: Um-hmm.

24 MS. OUELLETTE: Because I just want to
25 know -- they use that as a protection for us and we can't

1 -- they can't guarantee that if there's an exceedance
2 that we're going to be told in time. That's why I ---

3 THE CHAIRPERSON: Yes. Thank you. I will
4 now ask Mr. Brophy and then Mr. Marmon and then I'll do
5 another sweep to see if I've got all the registered
6 participants, then I will go to the other interested
7 parties for questions.

8 --- QUESTIONED BY MR. ERIC BROPHY

9 MR. BROPHY: Thank you, Madam Chair, and
10 good morning, Panel. I would like to pick up on what the
11 Panel has concentrated on, one member especially, for the
12 last week, and that's the issue with the rail bed.

13 I take it any rail line that would be
14 moving the sludge is a private line, and if perchance the
15 rail bed was found to be wanting, repairs were needed,
16 who would bear the cost of that?

17 And a second part to that question would
18 be, can monies be made available from monies allocated to
19 this project -- could they be made available for upgrade
20 to a rail bed if it's necessary?

21 THE CHAIRPERSON: Environment and Labour.
22 Now, I realize -- I think that we're going to have a
23 jurisdictional -- or another department involved, but
24 what can you -- what information can you provide to Mr.
25 Brophy at this point?

1 MR. BAXTER: Certainly, as you identify,
2 that's probably beyond our mandate, but I would expect
3 that the Proponent would work with the rail owner on the
4 security of the rail line and the stability of the rail
5 line and make sure that everything was up to
6 requirements, and if there were additional costs for that
7 they would work out whether the rail owner or the
8 Proponent would pay for those upgrades, but certainly
9 those would have to be undertaken and in place before any
10 transportation could occur.

11 MR. BROPHY: I raise that because we do
12 have a private line here and the bottom line is they're a
13 daily concern. They have threatened to pull out of here
14 on many, many different occasions, everything is being
15 done to try to keep them here, and any additional costs
16 that they would have to bear -- you know, that's why I
17 ask if monies could be made available from the project
18 funds. And I thank you very much.

19 THE CHAIRPERSON: I would just ask my
20 railroad colleague if he has any follow-up he would like
21 to pursue.

22 MR. CHARLES: No, I appreciate Mr. Brophy
23 following up for me. I'm quite happy about rail beds at
24 the moment. Thanks.

25 THE CHAIRPERSON: Mr. Marmon?

1 --- QUESTIONED BY GRAND LAKE ROAD RESIDENTS (RON MARMON)

2 MR. MARMON: Thank you, Madam Chair.

3 There was a reference to the solid waste incinerator and
4 it's quite well known that this incinerator was allowed
5 to run for a period of time out of compliance, and I have
6 a lot of confidence in Sydney Tar Ponds Agency that they
7 would never allow anything like that to happen.

8 But the incinerator itself, I assume, will
9 be contracted out to a contractor who will -- he will be
10 responsible for all the compliance issues that the
11 Department of Labour would be monitoring.

12 And I'm just wondering if there would be
13 any circumstances where the Department of Labour would
14 consider letting an operator operate this incinerator out
15 of compliance.

16 MR. MACPHERSON: I don't believe that
17 would -- that certainly would not be our intention, and
18 as a matter of fact, I think we'll be very interested in
19 the aspect of training and credentials for the operators
20 in the facility as well.

21 MR. MARMON: So, I take that as no, if
22 they're out of compliance that's it, they're shut down
23 until ---

24 MR. MACPHERSON: I think there will be
25 various sorts of stages in terms of checks and balances

1 in the system. I'm hoping there'll be an early detection
2 such that you're not going to have something getting out
3 into the community, but -- no, to answer your question,
4 no, that's our intention, to ensure that they're going to
5 be operating within the terms and conditions of the
6 approval that are provided to them.

7 MR. MARMON: Okay. Just one more on that
8 subject as kind of an addition to that question. We all
9 expect this incinerator to have some problems and at some
10 time be in an upset condition, or whatever you might want
11 to call it, where things could happen, and we know with
12 machinery and human error things will happen. We expect
13 that. That's not unusual.

14 But would you have a set number of upset
15 conditions where at some point you might say that, "We
16 will revoke your permit because you're just not
17 performing as well as you should, your history is not
18 that great"?

19 MR. MACPHERSON: We have different avenues
20 for -- under the compliance model to -- if we do end up
21 with a number of non-compliance issues we have the option
22 of warning, we have the option of a summary offense
23 ticket, a long-form charge, and there are situations
24 where sometimes approvals can be suspended, but at this
25 point in time I'd rather not get into specific details as

1 to what form or shape that's going to take.

2 It's my hope that if indeed we ever did
3 issue an approval that they would be striving at all
4 times to be working within compliance conditions.

5 MR. MARMON: Okay. Do I have one more
6 question? In the discussion on land transfer it was
7 stated that the transfer of liability does not go along
8 with the transfer of land when lands are bought from one
9 party to another.

10 Just as a matter of due diligence, would
11 your department insist that the most stringent of
12 guidelines be followed, whether they be federal or
13 provincial, as a condition of sale for any land or
14 transfer of any land that the Federal Government now
15 owns?

16 MR. BAXTER: Certainly we would look to
17 working with federal authorities on an acceptable level
18 of contamination and management for that. As you can
19 understand, there's certainly a lot of questions involved
20 with this site, Victoria Junction Site, and a number of
21 other federal properties that are reverting to the
22 province, and there are differences between federal
23 criteria and provincial criteria.

24 MR. MARMON: Yes.

25 MR. BAXTER: But we would plan to work out

1 that there be an acceptable management or remediation
2 plan for that, and acceptable would also mean that
3 there'd be some reflection in liability or long-term
4 management costs associated with those properties.

5 MR. MARMON: So, it would be more or less
6 a joint effort or -- like right now there's some
7 environmental problems with the VJ Site that would come
8 under federal jurisdiction right now. So, I would assume
9 that if there's a transfer of ownership there would be a
10 definition as to what was existing and what might happen
11 down the road under new ownership. Is that -- would that
12 be a planned type of thing?

13 MR. BAXTER: That would be very reasonable
14 to assume. We'd certainly want to know what the baseline
15 conditions were and make sure that we knew that before
16 anything else added to it or changed those conditions.

17 MR. MARMON: All right. Thank you.

18 THE CHAIRPERSON: Thank you, Mr. Marmon.
19 I'm going to call Ms. MacLellan forward in a second, but
20 just before I do that, so I don't forget this, I do have
21 an answer for Ms. Ouellette in terms of your question.

22 We checked the transcript. In fact, there
23 was no undertaking from Health Canada and we had asked
24 that you pursue this issue in your presentation and
25 provide us with the information you feel that the Panel

1 needs to hear with respect to that, and we'll certainly
2 be listening for it.

3 Ms. MacLellan?

4 --- QUESTIONED BY MS. CAPE BRETON SAVE OUR HEALTH (MARY-
5 RUTH MACLELLAN)

6 MS. MACLELLAN: Good morning and thank
7 you. Before I proceed, I'd like to clear up something I
8 said yesterday. I believe I called the lake Kilkenny
9 Lake yesterday where New Waterford got its drinking
10 supply. In fact, the name is Kilkenny Lake.

11 THE CHAIRPERSON: Um-hmm.

12 MS. MACLELLAN: And in actuality Kilkenny
13 Lake goes into a lake called Waterford Lake. Waterford
14 Lake is the actual drinking water, but the water from
15 Kilkenny Lake feeds into Waterford Lake via pipes. It's
16 piped. To keep the water supply level high in Waterford
17 Lake, Kilkenny Lake is directly pumped and piped into
18 Waterford Lake.

19 Kilkenny Lake has rockbed under it and it
20 is also fed -- as well as from other streams and stuff,
21 it is fed from a series of underground springs.

22 I have a couple of questions regarding the
23 incinerator. I'm going to try to be quick to try and let
24 everybody else talk, but if there's time at the end I
25 might like to ask a question about the Muggah Creek.

1 Okay?

2 You talked about your permit and you would
3 be the one issuing the permit provided you have the
4 ownership of the land.

5 I guess what I'm looking for is a
6 guarantee or some kind of reassurance that this permit
7 will operate to its fullest extent and that from time to
8 time if problems persist or come up that you won't modify
9 the permit as you have done in the past when it was a
10 municipal incinerator.

11 Indeed, after lobbying the Minister of
12 Labour and the various other components of government, we
13 did have a letter that they would -- they informed our
14 Municipality that they had to put an HCO monitor on and
15 you gave them a time period of two years. Following the
16 two years the incinerator proceeded to operate in
17 violation of its permit and was allowed to do so for up
18 to four years until it was closed.

19 I want some kind of assurance that this is
20 not going to happen if an incinerator is there. I want
21 some kind of assurance for the people that they won't be
22 poisoned anymore.

23 MR. MACPHERSON: I can only -- my answer
24 to that is that we're going to be holding the Tar Ponds
25 Agency to the terms and conditions of the approval.

1 And aside from that, there is provision in
2 the Act -- and I'm not suggesting right now that we're
3 interested in -- without even -- we don't even have an
4 application for the facility right now, but in the event
5 we ever did issue an approval it's not our intention to
6 anticipate wanting to make changes in that document, but
7 the Act does allow a formal process for a Proponent to
8 apply for a variance and it would be at that time before
9 we would make that decision, but we couldn't prevent a
10 Proponent from doing that.

11 So, I -- that doesn't necessarily give her
12 sort of a confident answer but that's just the legal
13 process.

14 MS. MACLELLAN: Would the public be
15 consulted if that happened?

16 MR. MACPHERSON: I think that aspect of it
17 is going to boil down to the ways in which we convey all
18 of the information that's going on within the project.

19 MS. MACLELLAN: So, you would not consult
20 the general public, you would just do it through the
21 closed-door meetings of the hand-picked committee that's
22 there in place now?

23 MR. MACPHERSON: I can't say right now
24 what shape or form that's going to take in terms of
25 information that's provided to the community, but we're

1 going to try to do the best job that we can and I'm
2 hoping that the Agency are going to do the same, but I
3 can't commit to -- you know, if we're looking at some
4 sort of a new process outside of the existing CLC, I
5 can't really speak to that now. We don't even have these
6 approvals in place.

7 THE CHAIRPERSON: Can I ask a question
8 about the CLC and the Department of Environment and
9 Labour. What relationship do you have to the CLC? Is
10 the CLC not a body that was formed by the Agency? It's
11 their own CLC? It's technically nothing to do with you?

12 MR. MACPHERSON: I think Mr. Potter might
13 be able to explain a little bit more the shape and form
14 and the purpose of the current CLC, but certainly we
15 would look for ways -- not necessarily another CLC but
16 some mechanism for transfer of information regarding any
17 of the future approvals that we may issue.

18 THE CHAIRPERSON: Do you have one more
19 question, Ms. MacLellan?

20 MS. MACLELLAN: Yes, one more question is
21 regarding the emissions from the stacks on the
22 incinerator. Are you going to be monitoring the
23 particulate matter, and, if so, what is the size of the
24 particulate you would be monitoring for?

25 MR. MACPHERSON: I guess for now -- and I

1 mentioned this earlier -- we're not prepared right now to
2 get into specifics in terms of criteria that's going to
3 be applied to an incinerator if we did issue an approval
4 for such a device, but suffice to say that that document,
5 if and when it ever -- it happens, that that's public
6 information and certainly there are markers for ongoing
7 monitoring on a daily or hourly basis that you can use to
8 monitor performance of the unit.

9 And perhaps the Agency might be able to
10 speak more to that than I.

11 THE CHAIRPERSON: Well, I'd like to just
12 follow that question up. I mean, surely there's some
13 basic things you normally ask for monitoring with an
14 incinerator. Surely you don't get it all from a
15 Proponent either in this case or any other case.

16 Would your air quality specialist care to
17 comment on that? You know, what are the important
18 indicators with an incinerator?

19 MR. MACPHERSON: Certainly PM2.5, which
20 has been asked, is one of the parameters that we would be
21 looking for and be concerned with. It's the fraction of
22 particulate matter that has the most significant
23 likelihood to cause health effects. So, it would
24 certainly be something that we would be looking for in
25 the monitoring plan.

1 THE CHAIRPERSON: Thank you. Just a
2 follow-up and then I must go to someone else.

3 MS. MACLELLAN: Yes, just regarding that
4 2.5 particulate, I spoke to some respiratory people and
5 some -- I have some medical people at easy access. They
6 believe that particulate matter has to be 5, because
7 particulate matter of 5 down to 2.5 goes into your lungs,
8 anything bigger than 5 only gets trapped in your upper
9 airways and is excreted quite normally, but 5 will get
10 down into your upper lungs where the 2.5 will go down
11 into your lower lungs but they are told to treat with a 5
12 and that a 5 is dangerous.

13 So, I think you'd better look at the 2.5 a
14 little bit better. Thank you.

15 THE CHAIRPERSON: Do you have just a
16 comment on that?

17 MR. MURPHY: Certainly. The science
18 around particulate matter continues to develop and -- but
19 at the moment the benchmarks that we have are the PM2.5
20 and the PM10. Most of the science is suggesting that
21 it's the PM2.5 and below fraction that is the -- having
22 the most impact.

23 Having said that, I think there's still
24 recognition that more work needs to be done and more is
25 happening on that -- we call it the coarse fraction --

1 and that'll continue to happen, and as that science
2 evolves we'll certainly be informed by it.

3 THE CHAIRPERSON: Thank you very much.
4 Can I just clarify? Now, have I got all the people who
5 are registered participants, all the people that I
6 noticed? I have a lady sitting next to Ms. Ouellette, I
7 have a gentleman at the back. Was there anybody else who
8 indicated that they'd like to ask a question?

9 Then I'll let Ms. MacLellan ask her
10 question about Muggah Creek -- I should have let you do
11 it then -- and then we will -- I'll just probably go back
12 to the Proponent and then we will move on to our next
13 presenter.

14 So, I'm sorry, I don't know your name, but
15 if you'd like to come forward and introduce yourself.

16 --- QUESTIONED BY MS. NEILA MACQUEEN

17 MS. MACQUEEN: Good morning, Madam Chair,
18 Panel, and ladies and gentlemen. My name is Neila
19 MacQueen, I live next to the Tar Ponds, and Mary-Ruth
20 MacLellan pretty well ask the question that I had
21 prepared, but anyway I was just going to mention about
22 incinerators has been a psychological plague to us in
23 Cape Breton.

24 First, it was down at the North End, then
25 they were going to burn it over in Point Aconi, now out

1 at the Victoria Junction, and we just shut down an
2 incinerator that malfunctioned. Now we do not even know
3 if CCME Guidelines are going to be followed.

4 My question is, what happens to us if it
5 malfunctions? Do we move the people out? Do we go to a
6 hospital? And I'm really worried about this.

7 MR. MACPHERSON: You know, I -- we're
8 going to be holding the Agency to a high standard with
9 the operation of this facility and I cannot give a one
10 hundred percent guarantee that there are not going to be
11 issues with the operation of this unit.

12 But that being said, I'm hopeful we're
13 going to get -- assuming an application package comes to
14 us for consideration for an approval, we're going to
15 ensure that all the checks and balances are in place to
16 protect the local community.

17 MS. MACQUEEN: Thank you very much. Also,
18 where I live so close to the Tar Ponds, what about our
19 health? I also have a convenience store, apartments and
20 two houses. If the smell, noise, dust and emissions are
21 too much for us to handle, this could really affect many
22 of us financially.

23 My question is, what about the safety of
24 the people and their property? Do we move the people?

25 MR. MURPHY: The health effects study

1 didn't identify that there were going to be significant
2 effects on the surrounding areas, I don't think.

3 MS. MACQUEEN: No.

4 MR. MURPHY: But, you know, if there are
5 upset conditions, periodic malfunctions, I think the
6 Agency will be, you know, expected to have plans for what
7 needs to happen in the cases that they do.

8 MS. MACQUEEN: There's also something that
9 has been bothering me for some time about this CLC
10 committee. What is their function? I belong to a
11 Neighbourhood Watch and we have a representative in it
12 and we have had no information whatsoever, and here we
13 live right next to the pond and you would think somebody
14 would be informing us.

15 THE CHAIRPERSON: I'm going -- that is, I
16 think, a question that goes to the Agency. Our questions
17 were right now directed to the department, but I'm going
18 to allow the Agency to give you an answer ---

19 MS. MACQUEEN: Thank you.

20 THE CHAIRPERSON: --- and then I will go
21 to the next gentleman who had questions. So, are you
22 prepared to give an answer to Ms. MacQueen?

23 MR. POTTER: Yes, thank you. Just two
24 points, I guess, in terms of the function of the CLC. It
25 is not a decision-making body, it's a sounding board for

1 the Agency. We use it to keep the public informed, allow
2 the information to flow out from the various
3 representatives from the different organizations that sit
4 on the CLC, but it's primarily a tool that the Agency
5 uses to get feedback from the public on what we're doing,
6 where we're going, what we're thinking about doing. As I
7 say, it's a sounding board very much.

8 So, in terms of the representation, we do
9 have a representative from the North End.

10 MS. MACQUEEN: Um-hmm.

11 MR. POTTER: As you know, we did change
12 the representative. There was a replacement. The
13 current representative does attend the meetings. Every
14 rep at various times has to miss a meeting for various
15 reasons, but I'd certainly encourage you to contact the
16 rep. If you're feeling you're not getting enough
17 information or feedback, contact him and ask him to keep
18 you informed of what's happening.

19 We do post the minutes on our website, and
20 at any time you have questions feel free to contact the
21 Agency directly.

22 MS. MACQUEEN: Thank you, Mr. Potter, but
23 we have had no feedback whatsoever and we have had no
24 information going to the CLC committee. And thank you
25 for helping me in the past.

1 THE CHAIRPERSON: Thank you very much, Mr.
2 Potter. I'd just like to follow up back to Environment
3 and Labour with respect to that.

4 Well, I guess we had a little bit of
5 exchange about it before. My understanding is that quite
6 often the department does make it -- quite often -- for
7 certain projects you make it a requirement of the
8 approval that the Proponent establish a CLC.

9 Now do you have some guidelines? Do you
10 put some requirements as to how that CLC should be set
11 up, what his terms of reference should be? Do you have
12 some kind of standards, guidelines that usually attach to
13 that or do you do them on a case by case basis?

14 MR. MACPHERSON: I do believe we have a
15 general frame work for the operation and function of the
16 CLC but due to the magnitude of this particular project,
17 I think we're going to have to give it some thought as to
18 how something like this is actually going to be a good
19 operational process, to be able to get that information
20 out. I think that's what we see as the function of the
21 CLC process is to get that good exchange of information.

22 THE CHAIRPERSON: And of course it is
23 possible that's an area that the panel might, based on
24 input we receive, the panel might wish to reflect on
25 that. Gentleman at the back, I'm sorry I don't know your

1 name.

2 --- QUESTIONED BY MR. CAMERON ELLS

3 MR. ELLS: Good morning, Madam Chair. My
4 name is Cameron Ells. My background is civil engineer
5 and I work as an independent environmental consultant. I
6 sit in the back of the room during these hearings as a
7 scribe, so to speak for the Cement Association of Canada.
8 But I stand here now in a personal capacity, independent
9 of that group. How many questions am I allowed?

10 THE CHAIRPERSON: Two.

11 MR. ELLS: Therefore there'll be two
12 questions.

13 THE CHAIRPERSON: Two is -- tends to be a
14 fairly flexible number but I -- two or three, shall we
15 say.

16 MR. ELLS: Then the number will be two.
17 Very well. In -- as an introduction of myself to the
18 panel, my work as an independent consultant involves work
19 on a per project basis with government departments,
20 industry, consultants, contractors on projects in Canada,
21 the States and whatnot. In my background I've been
22 involved in the wording of what ultimately became the
23 1995 Environment Act. The 1996 ---

24 THE CHAIRPERSON: I'm just going to ask
25 you if you can get closer to one of those two mikes. I

1 realize that one's too low and one's -- you might want to
2 turn the other one a little bit closer then people will
3 be able to hear you.

4 MR. ELLS: Will this one work?

5 THE CHAIRPERSON: Okay, that's pretty
6 good. As long as you're close to something.

7 MR. ELLS: Very good. In my background
8 I've been involved in the -- and made contributions to
9 what became the 1996 Guidelines for the management of
10 contaminated sites in Nova Scotia. I was also an
11 original member of the Atlantic Steering Committee which
12 developed the Atlantic RBCA Site Specific Approach
13 commonly used in Atlantic Canada. I've also been an
14 independent site professional or engineer holding the
15 feet of Mr. Shosky to the fire on projects in Nova Scotia
16 and elsewhere.

17 I have two questions for the department.
18 One, in my experience on environmental site assessment
19 projects, these are complex questions that involve
20 multiple jurisdictions at different levels of government.
21 Typically there is a lead agency from the government that
22 will be that one window of communication for different
23 aspects, transportation, natural resources, environment,
24 Federal, Provincial, that sort of thing. In a project
25 such as the Sydney Tar Ponds, would the department --

1 could the department imagine being a potential one window
2 of communication between the Proponent and the different
3 departments, Provincial and Federal with respect to
4 regulatory matters?

5 MR. MACPHERSON: We have no issue with
6 that but I think what we're thinking right now is looking
7 to sit down with the other jurisdictions and if they're
8 comfortable with that I think we'd give consideration to
9 it.

10 MR. ELLS: Thank you. Ten years ago, in
11 1996 ---

12 THE CHAIRPERSON: Oh, sorry, can I just --
13 I wonder if I heard your question. Was your question
14 referring to Federal as well as Provincial or just
15 Provincial?

16 MR. ELLS: The question was Federal and
17 Provincial on site assessments, impact assessments, they
18 often -- there is a lead agency.

19 THE CHAIRPERSON: Right. Okay.

20 MR. ELLS: Sometimes the Province -- it
21 could easily be somebody else.

22 THE CHAIRPERSON: All right. Thank you.

23 MR. ELLS: The second question is that ten
24 years ago, the 1996 Guidelines for the Management of
25 Contaminated Sites in Nova Scotia took effect. And from

1 my own perspective, I guess I would characterize the
2 department's experiences since then in the following --
3 and my question would be, if the department generally
4 agreed with my characterization.

5 I would characterize the ten years since
6 the guidelines came into effect that the Nova Scotia
7 Department of Environment has been involved consistently
8 and on multiple sites with contaminated sites or project
9 files that involved a mixture of guidelines that
10 originated from the Province as well as Federal
11 guidelines, CCME guidelines and was the regulator of
12 record for all of these on the same projects, that these
13 guidelines were sometimes generic guidelines.

14 Sometimes they were site specific
15 guidelines but no matter which ones they generally were
16 providing a consistent level of protection to the public
17 or the environment. And whether it's generic or site
18 specific that was an extension of how much information
19 was brought to the table or the level of certainties
20 involved.

21 That these site specific goals when they
22 have been derived for different sites have involved many
23 different receptors, many different locations and that
24 their routine involvement with contaminants of concern
25 have included VTechs, TPH, TAH, VOCs, pesticides,

1 herbicides, dioxins, furans that the writ of the
2 department has been involved not on Federal properties
3 such as the Membertou Reservation but has been for
4 properties, for entities owned by the Federal Government
5 such as Canada Post and that site specific goals are
6 monitoring timelines have been derived based on decay
7 rates of components but have also, on occasion been based
8 on the length of time involved for leachability and
9 hydraulic conductivity to move a compound of concern from
10 a source area to a receptor. That these have been
11 involved in many projects over ten years.

12 THE CHAIRPERSON: Yeah, you probably guess
13 what I'm about to say. I'm losing the question, although
14 I realize your questions is going to be, do you agree
15 with the statement I've just made but perhaps you could
16 move to the question that we can get some response from
17 Environment and Labour.

18 MR. ELLS: The question that was at the
19 beginning of this and I'll use it at the end of it, is
20 would the department generally agree with that
21 characterization of the last ten years of experience in
22 contaminated site management work in the Province.

23 MS. BAXTER: Yes, we would.

24 MR. ELLS: Thank you, Madam Chair.

25 THE CHAIRPERSON: Thank you very much.

1 Ms. MacLellan, do you want to ask your Muggah Creek
2 question and then I am going to move to our next
3 presenter.

4 --- QUESTIONED BY CAPE BRETON SAVE OUR HEALTH
5 COMMITTEE (MS. MARY-RUTH MACLELLAN)

6 MS. MACLELLAN: I thank you very much for
7 your patience. I'll try to be quick. My question
8 regarding the Muggah Creek and probably the whole thing
9 is the slag in the SYSCO -- the last closed SYSCO site.
10 Have you ever tested the slag for contaminants?

11 MR. MACPHERSON: I've seen different
12 studies that have been done on the slag, yes.

13 MS. MACLELLAN: Could they be made
14 available?

15 MR. MACPHERSON: I'll have to -- actually
16 most of the information that's within our organization is
17 for the most part, available through the Freedom of
18 Information process but I'll have to go back and actually
19 determine just the nature of where -- what the driving
20 force was actually behind that last study that was done.

21 MS. MACLELLAN: I have had experience in
22 the past with Freedom of Information and after a two year
23 paper trail I still haven't gotten answers from
24 Department of Transport on some things. I did, however,
25 call your department regarding the slag when they were

1 using it for road fill and one day I was driving my car
2 and became so sick I had to stop in the middle of the
3 road to get out to vomit. When I did call your
4 department, you told me that, yes it was tested. There
5 was contaminants but it was all right as long as it
6 wasn't around waterways.

7 THE CHAIRPERSON: I'm going to -- do you
8 have anything to add to that? Are you taking and are you
9 going to take an undertaking to come back and provide us
10 with information of the status of the information that
11 you hold and the availability of it?

12 MR. MACPHERSON: I'll have to talk to our
13 information officer about that because typically any
14 requests that come to our organization have to go through
15 them first and then the valuate and it's really, as a
16 rule, out of my hands.

17 THE CHAIRPERSON: All I'm asking is that
18 you bring back to the panel the -- whatever you can in
19 terms of the status of that information.

20 MR. MACPHERSON: I will.

21 THE CHAIRPERSON: Thank you. Thank you,
22 Ms. MacLellan.

23 MS. MACLELLAN: The other one was just
24 about the SYSCO site. And since the SYSCO -- the last
25 closed SYSCO site impacts on the Muggah Creek, did you do

1 an environmental assessment on that site and is it -- has
2 it been provided to the panel?

3 MR. MACPHERSON: I haven't had direct
4 involvement with a lot of the remedial activity that's
5 been taking place over on the SYSCO property. I do know
6 that over the last number of years there has been
7 environmental site assessment going on. But beyond that
8 I can't really say a whole lot more.

9 MS. MACLELLAN: Could you check into that
10 and make that available to the panel as well?

11 MR. MACPHERSON: So just to clarify, what
12 exactly was the information you were looking for on
13 SYSCO?

14 THE CHAIRPERSON: I guess the information
15 is just to come back and tell the panel on the status of
16 any information that you hold in terms of reports and
17 testing and environmental assessments studies that you
18 hold and what the status of those are. [u]

19 MR. MACPHERSON: Would I be able to
20 provide that in writing back to the panel?

21 THE CHAIRPERSON: Oh, certainly.

22 MR. MACPHERSON: Okay, I will do that.

23 THE CHAIRPERSON: Don't you want to come
24 back?

25 MR. MACPHERSON: Sure.

1 MS. MACLELLAN: Thank you, Madam Chair.

2 THE CHAIRPERSON: Thank you, Ms.

3 MacLellan. I'm just going to go now to the Proponent
4 again just to see if they have any follow up question of
5 clarification.

6 MR. POTTER: No questions.

7 THE CHAIRPERSON: Thank you. We will take
8 a five minute break and thank you very much to the
9 presenters from Environment and Labour. We appreciate
10 you coming here, presenting and asking questions. The
11 next presenter will be the Medical Officer of Health in
12 five minutes.

13 --- RECESS: 11:43 p.m.

14 --- RESUME: 11:49 A.M.

15 THE CHAIRPERSON: We're going to start the
16 session again.

17 Just a word on the schedule to begin with.
18 We are going at 12:15, for lunch, today, not 12 o'clock.
19 So, what we're going to do, and I thank our next
20 presenter for presenting us with their patience in
21 waiting.

22 We're going to have a presentation from
23 the Office of the Medical Officer of Health, and then we
24 will -- depending on the length of their presentation --
25 the Panel will begin and possibly complete its

1 questioning.

2 We will then take a lunch break and
3 afterwards we will resume with the questioning by other
4 participants before we move on to Nova Scotia
5 Transportation and Public Works.

6 So, I would like to welcome our presenters
7 and you have 40 minutes to make your presentation.

8 --- PRESENTATION BY OFFICE OF THE MEDICAL OFFICER OF
9 HEALTH (DR. JEFF SCOTT)

10 DR. SCOTT: Good morning, my name is Dr.
11 Jeff Scott. I'm the Medical Officer of Health for the
12 Province of Nova Scotia.

13 I'd like to introduce my colleague, Gordon
14 Mowat, who is an Environmental Health Consultant, a staff
15 member in the Department of Health Promotion and
16 Protection, working with the Medical Officer of Health
17 Team.

18 Originally, this presentation was going to
19 comprise the Regional Medical Officer of Health, Dr.
20 Badenhorst; fortunately for Dr. Badenhorst, unfortunately
21 for us, as there is a -- he obtained a new position in
22 British Columbia and moved a couple of weeks ago.

23 But this presentation, basically, is an
24 expansion of the submission that he primarily prepared
25 based on his experience, plus my experience, and -- when

1 he was here for five years as Regional Medical Officer.

2 Next one, please.

3 So, we are actually members of the Nova
4 Scotia Department of Health Promotion and Protection.
5 That is a new department, just created a couple of months
6 ago, and it basically has put together the functions of
7 the Office of the Chief Medical Officer of Health, with
8 the other areas of public health and health promotion at
9 the department level, and it is starting to enhance and
10 increase the resources available to deal with public
11 health issues.

12 Next. What I'm going to do during the
13 outline is just set the context around Public Health, the
14 way we work, the authority that rests with the Medical
15 Officer of Health -- the Regional Medical Officer of
16 Health and the Medical Officer of Health Team -- to talk
17 about the partnerships that have taken place, and need to
18 continue to take place with others. To talk about the
19 independent role of the Medical Officer of Health, to
20 have some comments specifically relating to air
21 monitoring and recommendations pertinent to that, which I
22 think are a bit broader, and some recommendations that
23 Dr. Badenhorst and I had from this, and then a summary
24 with that.

25 Next one, please. Basically, just to set

1 the scene, Public Health is [?] -- I wanted to present
2 that -- but basically the key area here is that we are
3 looking at the issue of, not just preventing and
4 promoting health, but we also want to prevent disease and
5 improve the quality of life through organized efforts.

6 We don't focus so much on individuals, as
7 on the population itself, recognizing that that is made
8 up. But it's a combination of science and skills and we
9 direct those towards action, working with others in order
10 to improve health in other activities.

11 Really, we tend to focus in two areas;
12 preventing disease and dealing with health needs of the
13 population.

14 The next one, please. There are core
15 functions and I make an apology straight away, because I
16 didn't realize until I look now that health activity is
17 not a core function, it's one of the operation
18 activities.

19 But you can see there are various
20 activities that we are involved in, in this area, and
21 obviously -- relevance of the issue of health protection.

22 Now, we have a new department, just
23 created, but over the last few years we really started to
24 -- the Department and the Province has started to try and
25 enhance its services to deal particularly with the areas

1 of health protection.

2 So, we now in terms of the expertise with
3 that, in addition to myself, as the Chief Medical Officer
4 of Health, we have a Deputy Chief Medical Officer of
5 Health, and the two of us have had, between ourselves, 13
6 and 14 years of experience of working with issues around
7 the Coke Ovens Site in Sydney.

8 The Deputy Chief Medical Officer of
9 Health, Dr. Maureen Baikie, was also a Resident in North
10 West River and was the Medical Adviser for the Labrador
11 Innuit Health Corporation, when the mobile incinerator
12 site process took place. So, has some knowledge in areas
13 around that.

14 In addition to that, we have two more
15 Medical Officers of Health, based in the Department, who
16 provide services to the districts. One of them focusing
17 on Environmental Health, and we have three -- two --
18 three other Medical Officers of Health in the regions,
19 and currently we have a new vacancy here, unfortunately,
20 which I'm in the process of, obviously, trying to fill.

21 I do recognize, however, that there will
22 be a time period with that and so we're continuing to
23 provide that service from the Medical Officer's staff,
24 based in the Department of Health.

25 In addition, we have environmental health

1 expertise through Gordon Mowat, and we have
2 epidemiological expertise.

3 So, our resources have increased and as
4 well as that the -- we have public health staff, who work
5 -- public health nurses who work in the districts and
6 particularly in the Cape Breton area, and they've had
7 experience in the area of environmental health issues
8 around the Coke Oven Site.

9 I think that's really important, because
10 one of the key things that one needs to do, and one of
11 the things is that experience is valuable and recognizing
12 that this will be a long-term Project, it's important
13 that we have a process, why we need to focus, and have
14 individuals who focus on that.

15 We need to also ensure that we have the
16 ability, when an individual leaves, retires, or those
17 issues, or when we have a -- when we have issues of
18 people on vacation that you do have some knowledge and
19 background, in order to deal with issues that undoubtedly
20 will arise.

21 In addition, we provide a 24 hour service
22 of a Medical Officer of Health, always on call to deal
23 with any urgent health incident.

24 Next slide, please. We actually now, in
25 terms of authority, there is a new Health Protection Act.

1 This Health Protection Act was actually just proclaimed
2 last year, and we have and are currently developing
3 regulations, and Gordon Mowat is very much involved in --
4 particularly areas around health hazard regulations.

5 The focus of the development of that Act,
6 arose from the issue of the SARS. Obviously that took
7 place in Canada, but is one -- it is, I think, one of the
8 most current up-to-date legislations and we try to
9 incorporate that to deal with the reality of public
10 health today, and to allow us to have the appropriate
11 tools that are necessary.

12 The Chief -- myself and the Medical
13 Officers, we are accountable now -- it was originally to
14 the Minister of Health -- we are now accountable to the
15 Minister of Health Promotion and Protection.

16 Next. The authority within this Act means
17 that we shall, as appropriate, develop surveillance plans
18 for communicable diseases, for notifiable diseases and
19 for dangerous diseases. And this is part of the
20 authority and things that we work with.

21 Next slide. We also shall, within that,
22 develop as appropriate communication plans and protocols
23 relating to health hazards, to notifiable diseases,
24 communicable diseases and it also allows us to have the
25 ability to recommend to the Minister, if necessary, an

1 issue around public health emergency and the appropriate
2 communication areas and issues around that.

3 Next slide, please. The Chief Medical
4 Officer of Health and the Medical Officers, in addition
5 to that, may conduct risk assessments.

6 And that means that we can, in fact, do
7 that in practice. What we look at is whether, in fact,
8 an issue or incident is covered by another jurisdiction
9 or authority, but we have broad-based authority to do
10 assessments and to assess any degree of risk, to monitor
11 or audit any potential or existing risks, and if
12 required, make an order necessary to prevent, remedy or
13 mitigate that risk.

14 This is new legislation, and new
15 regulations. We have not yet had the opportunity to put
16 this into practice, but it was designed to give us the
17 flexibility and tools to deal with issues which can and
18 sometimes do arise.

19 Next one, please. In order to function,
20 it is very important that we, in a way -- the way I
21 described the role of a Medical Officer of Health and the
22 Team, it's a bit like a general practitioner for the
23 community. So much that we don't see individual patients
24 in our role, but we function looking at the community
25 health and issues and concerns.

1 In order to do that, we need to be able to
2 work and consult with various partners, the same as a
3 physician would consult with specialists, a GP would
4 consult with specialists for particular issues.

5 And so we -- this is really important that
6 we have that, and that expertise often rise in
7 governments, other levels of government, federal, our own
8 province, academia -- we have strong links with academia
9 -- in terms of applied public health research or using
10 their knowledge, and basically the functions that we do:
11 We're involved in collecting information, analyzing it,
12 putting -- trying to formulate what the issues are, and
13 if necessary acting and encouraging work in a collaborate
14 manner and consulting, because we need to consult,
15 particularly on complex issues, such as the Coke Oven
16 Site cleanup process.

17 The next one, the partnership that we have
18 and continue to have in dealing with -- not just this
19 issue, but many issues involving environmental health --
20 our federal government -- that's very important to us.
21 Health Canada provides a degree of expertise, and the
22 multitude of that, which we have used on many occasions
23 in consultation in issues -- areas around the Coke Oven
24 Site.

25 We will hope to continue, and I think it's

1 really important, we have a process that throughout this
2 -- we can continue throughout the life of this Project,
3 be able to consult and use expertise, and we tend to work
4 in a collegial manner with colleagues and professionals
5 in that degree, but that needs to be built in, because,
6 ultimately, issues will arise which will require a
7 multitude of expertise.

8 The new Public Health Agency of Canada
9 provides us with national epidemiological expertise, and
10 we work with other federal departments, depending on the
11 issue and many of those have been involved in the Coke
12 Oven Site.

13 The next one, please. We also, obviously,
14 have worked with others in the provincial level. For
15 this particular area, the Department of Environment and
16 Labour has been critical in that, and now we've partnered
17 with the Nova Scotia Department of Health, because we're
18 no longer there, but Agriculture, Fisheries and
19 Aquaculture, depending on the situation. And, indeed,
20 the Medical Officer -- the Regional Medical Officer has
21 played a role -- an ongoing role in working with
22 Environment and Labour in providing the public health
23 perspective or the public health lense as issues come to
24 their attention, when they're looking at issues around
25 permits or data. What we try and do is put that public

1 health perspective and look at that from what that would
2 mean in terms of health to the population, potential
3 health threats, how does that compare with theoretical
4 risks, etc.

5 Next one, please. We also need to have
6 and continue to work with local agencies. The Regional
7 Municipal involved in environmental issues and the
8 Medical Officer of Health has a strong role with that.

9 Also, with the Sydney Tar Ponds Agency,
10 because there has been work, collaborate work that's
11 taken place with Dr. Badenhorst and myself in the past
12 with equivalence to look at -- provide that public health
13 perspective, because it's really important that we have
14 knowledge about what is going on and the way things work,
15 because we're often asking questions later on to the
16 public around health issues relating to the Coke Oven
17 Site and obviously to the cleanup process.

18 And of particular importance is our work
19 with Cape Breton District Health Authority. We worked
20 closely, as I've said with the public health and staff
21 who actually are employees of the District Health
22 Authority. But what we've seen, which has been very
23 important is being a continuation of involvement,
24 particularly with the medical staff and the senior
25 administrative staff, who have taken a role because the

1 District Health Authorities have a role now in terms of
2 helping and improving population health. And we see that
3 the Resident -- particularly the Resident Physicians --
4 have a scientific background and have credibility locally
5 are really important as part of the process, and I think
6 something needs to be built in in terms of whatever
7 communication goes back to a communication route to
8 ensure that the information is transparent as possible.

9 The next one, please. The other issue
10 around the role of the -- which is a very important issue
11 -- around the role of the Office of the Chief Medical
12 Officer, Office of the Regional Medical Officer of
13 Health, is the independence of that.

14 We are government employees; however we
15 are expected, and within legislation, expected to advise
16 the public on risks and that -- this is important. It is
17 there by historical record. It is a recognized Canadian
18 model and it's emphasized by the creation of the Chief
19 Public Health Officer for Canada.

20 In that -- what we need to be able to do
21 though is be able to, if we access it, to provide advice
22 and that must be based on the best evidence, and that
23 really means that we need to be able to access expertise,
24 cross-cutting expertise from the various agencies or
25 others, and at times we have solicited consultation or

1 expertise if that is required.

2 But this is an important ongoing role and
3 I think, really -- and that's why the public will often,
4 and I'm sure have, and will continue in the future, come
5 to the Medical Officer of Health responsible for this
6 area with issues and saying, "Well, what does this mean
7 in terms of my health?" That is an ongoing important
8 role for a Medical Officer of Health.

9 Next. Now, one of the key issues, I
10 think, and I bring this up, that Dr. Badenhorst had been
11 involved with, and we will continue to have involvement
12 the Medical Officer Team, recognizing the concerns of
13 about their monitoring.

14 It has been -- one of the recommendations
15 we have is that that really needs to be of an appropriate
16 high quality.

17 We really got to have a program of
18 monitoring that focuses on, you know, what are the
19 concerns both acute and long-term? And what are those
20 and how do those -- what do they mean, in particularly,
21 with reference to health.

22 It's important that that's -- many people
23 have brought up that that be a process that is trusted by
24 the community and that it works well, and it has to be
25 transparent. It needs to have stakeholder involvement,

1 so they know how this process works, needs to have
2 involvement so that they have confidence in it. It needs
3 to have the ability to report to the community. The
4 Medical Officer of Health will require that they are
5 involved and that the information is reported back to
6 them, and it needs to include enough information in a
7 manner that this allows some interpretation, and in fact
8 it needs to deal with current information and some
9 cumulative information, and it needs to -- we need to be
10 able to use that information, so that we can actually
11 interpret what that means in terms of potential or true
12 health impact.

13 One of the areas we see is that,
14 obviously, using very stringent guidelines which are
15 important, we do get bound by numbers and it's important
16 that we -- if there are issues that take place, we say,
17 "What does that really mean in terms of a person's
18 health?" Because what we need to be able to do is deal
19 with public concern, recognize and prevent true threats,
20 but also be able to be reassuring if a threat does not
21 actually exist.

22 Next one. It's very critical, and this is
23 based on experience with the Regional Medical Officer in
24 air quality monitoring is that there are appropriate
25 quality assurance programs -- we need to see that -- so

1 we know the specifics. We know that any test that takes
2 place we can have false positives, false negatives, and
3 so it's important that the program be aware of the
4 criteria around the test, so that we can -- when the
5 result is there we can know, "Is that a true result, a
6 valid result?"

7 Because it's -- the same as in clinical
8 medicine, in dealing with patients. We want to be sure
9 that the test tells us what it's meant to tell us, and
10 it's very important that a communication plan be
11 developed, which allows the comments of the Medical
12 Officer of Health, so that the public can be aware of any
13 true health threats, or if it's not a health threat, be
14 involved.

15 And what I've stated is that this is
16 something that Dr. Badenhorst is very involved in working
17 with either the Agency or with Environment and Labour in
18 working towards these, and our intent is to continue that
19 process and continue involvement, because of the
20 importance of doing that.

21 Next slide, please. The Medical Officer
22 of Health and the Office of the Medical Officer of Health
23 doesn't see its role to -- for the recommendation of one
24 technology or other.

25 We believe that they obviously have the

1 appropriate expertise that's providing the information.
2 We will support the cleanup process and the
3 recommendations as put forward.

4 Our role is to continue involvement, so we
5 can be as knowledgeable as possible and continue to be
6 able to appropriately advise the public on risks or lack
7 of risks and appropriately advise so that the -- where
8 the program can be targeted to deal with those public
9 health issues.

10 The other thing that I think is really
11 important is that -- the recommendation is that we really
12 do see that the cleanup needs to also take into
13 consideration and address long-term socio-economic
14 benefits.

15 One of the key areas of concern is the
16 stigma of the Coke Oven Site -- I have the ability to
17 travel and -- the negative feedback that comes from that,
18 and I realize the way it affects the community. I think
19 there is an opportunity, and it's recognized, to provide
20 overall benefit in terms -- to the community, in the
21 short and in the long term, and the cleanup process needs
22 to consider that throughout, and that's obviously air,
23 and individuals are looking at that in terms of more
24 development.

25 But we think that that would be really

1 important looking at the broader aspect of health, that
2 this is something that needs to be strongly considered.

3 Next recommendation. We do have one area
4 of caution, and obviously we know that incineration is an
5 area of particular concern to the community, and an
6 unplanned incident has the potential to derail the whole
7 process, and I think it's really important that the
8 various agencies involved ensure that procedures, plans,
9 permits, guidelines, instant management plans are put in
10 place; (a) to prevent that (b) to be able to respond and
11 (c) to be able to communicate issues around that area.

12 I mean, this is necessary for any type of
13 the cleanup process, but the incinerator, itself, we
14 recognize is already there and is likely to be one within
15 that.

16 Okay. The next one, please. So, in
17 summary, this is the public health. We focus on
18 prevention of disease, that's what we want to do. We
19 have responsibilities in my office to observe, to
20 analyze, to prevent, remediate and mitigate and we will
21 be working, in partnership, with others to do that,
22 because we believe it's multi-discipline teams at cross-
23 levels that allow us to do that most appropriately.

24 Next one, please. We have the ability to
25 -- I say "we," well we work with others -- we will retain

1 past 1:00.

2 --- Upon recessing at 12:10 p.m.

3 --- Upon resuming at 12:46 p.m.

4 THE CHAIRPERSON: Good afternoon. We will
5 begin this afternoon's session.

6 Before we return to our presenter, the
7 Office of the Medical Officer of Health, I have one
8 housekeeping issue to address, and this is in reference
9 to something that happened on May 3rd.

10 The Sierra Club during their questioning
11 made a reference to off-site contamination originating
12 from the Coke Ovens Site and requested Public Works and
13 Government Services Canada to respond to this.

14 The next step was that Public Works and
15 Government Services Canada then asked the Sierra Club to
16 provide those references.

17 So, the next day, May 4th, the Sierra Club
18 provided that in a written undertaking and provided
19 references to text that appeared in Appendix B of Volume
20 1 of the EIS.

21 Subsequently, the same day, Public Works
22 and Government Services Canada responded in writing,
23 indicating that they did not feel that the references
24 were adequate and asking for more information.

25 Now, the Panel has considered this matter

1 and rather than carrying back and forth in this manner,
2 with subsequent responses and more responses, what we
3 decided is that we're going to ask the Sierra Club if
4 they would present this concern in this matter and
5 exactly what that concern is, where they found their
6 information and the connection to the current Panel
7 review of the project, when they make their presentation
8 or make one of their presentations, and then the Panel
9 will then take the issue from that point onwards and see
10 what additional information the Panel needs to obtain to
11 address that.

12 So, I'm now going to -- so each of those
13 written items have been -- there are two written items
14 associated with this exchange and both of them have been
15 filed with the Panel, with the Secretariat, and will go
16 on to the public registry, but can be obtained through
17 the Secretariat.

18 So, we have our presentation from Dr.
19 Scott this morning. Thank you very much for that. So,
20 we're now going to proceed to the -- the Panel does have
21 some questions for Dr. Scott and then we will open
22 questioning to other participants.

23 THE OFFICE OF THE MEDICAL OFFICER

24 --- QUESTIONING BY THE JOINT REVIEW PANEL

25 THE CHAIRPERSON: Sir, thank you again for

1 your presentation.

2 We're very interested to note the new
3 powers and capacities that you have through the new
4 legislation.

5 Now, obviously, it's new. There's no
6 track record in Nova Scotia, so we can't really know
7 about the track record, but I -- what my first question
8 was, is this legislation -- I presume it's modelled on
9 something in other provinces, and do you have anything
10 that you can tell us about that?

11 DR. SCOTT: Well, I can start with that.
12 But in the process of developing legislation, and that
13 was -- Dr. Maureen Baikie was the key -- my Deputy was
14 the key person -- but what she did was, she actually --
15 basically consulted with colleagues and with legislation
16 in other jurisdictions.

17 There was a review of the, you know,
18 appropriate guidelines, and yes, it was supposed to be as
19 modern as possible, and since that time I've -- what
20 we're seeing is other provinces and territories are
21 updating their legislation. We are getting asked for the
22 process around ours.

23 THE CHAIRPERSON: Okay. Thank you.

24 Now, the Medical Officer of Health has the
25 authority -- we understand from the presentation -- to

1 monitor or audit or order intervention to deal with
2 health hazards, that's correct?

3 DR. SCOTT: Yes, we can and we have that
4 authority.

5 THE CHAIRPERSON: Yes. So, will it be a
6 general practice to have other agencies, such as
7 Environment and Labour, provide monitoring data from the
8 Proponent to the Medical Officer of Health?

9 DR. SCOTT: What we will see is that the
10 Medical Officer of Health and the Medical Officer Team --
11 the Regional Medical Officer of Health -- or if that --
12 that is provided from my office -- will be an integral
13 part of the monitoring that -- not only the monitoring
14 but helping the development of that.

15 So, I would see it as normal practice that
16 we would receive appropriate information that's relevant,
17 so that we can get a sense of what's going on, and also
18 if there are exceedances or other issues, we would
19 receive that.

20 I can require that, if necessary. But, in
21 practice, it is -- it has not been, and it doesn't seem
22 to be an issue and, in fact, as I said we can require
23 that.

24 THE CHAIRPERSON: So, you will be an
25 integral part of the, sort of the, oversight, of their

1 monitoring data and you'll have the time and resources to
2 accomplish that?

3 DR. SCOTT: We certainly -- as I said, we
4 have had -- we have the -- we have increased
5 significantly our resources overall, including Medical
6 Officer of complement. The other thing that has happened
7 is that the recent creation of the new department
8 resulted from an external review of public health.

9 That report has been accepted by the
10 government. The recommendations within that report call
11 for, with the next five years, a doubling of the total
12 funding going to public health, and, obviously, we have
13 to prioritize what are the issues.

14 But if this is an ongoing significant
15 issue, my intent would be to resource it as appropriate.
16 The idea is to have a Medical Officer of Health here,
17 because it becomes part of the work that a Medical
18 Officer of Health would be able to continue to do.

19 THE CHAIRPERSON: Do you have the capacity
20 or do you anticipate at any point carrying out your own
21 monitoring?

22 DR. SCOTT: No, we don't have the capacity
23 -- you know what I see -- I mean, the monitoring in terms
24 of chemicals or things related to the site, related to
25 air quality or water quality, I mean that requires

1 specialized equipment, specialized expertise and I would
2 see that as being there.

3 I think what we need to be assured is, you
4 know, "What is the process? What are the criteria? What
5 are the quality guidelines?" so that if -- we can
6 appropriately interpret, if those reports required the
7 attention of the Medical Officer of Health.

8 THE CHAIRPERSON: So, in terms of the
9 capacities or the powers that you listed in your
10 presentation to monitor or audit or order intervention,
11 then "audit" would be the key word.

12 DR. SCOTT: I said -- yes, and as I said,
13 we would normally not be -- if another jurisdiction,
14 provincial jurisdiction, had authority anyway we wouldn't
15 -- necessarily wouldn't intervene in terms of, would be
16 us requiring it.

17 We would expect -- and what normally
18 happens in areas where the concern is public health -- is
19 that Medical Officer of Health is actually at the table,
20 and an integral part of the team involved in that.

21 THE CHAIRPERSON: In other provinces where
22 they've had the Medical Officer of Health, which has
23 these capacities or powers for longer, do you have an
24 idea or sense of how common it is for the Medical Officer
25 of Health to actually use his or her authority to

1 intervene or stop work for projects of this nature?

2 I realize that may be -- that's other
3 jurisdictions, but you may have some sense of that.

4 DR. SCOTT: I don't really have a sense of
5 that.

6 I reiterate, I think one of the most
7 important powers that has always been in place for the
8 Medical Officer of Health is the requirement to advise
9 the public of any concerns.

10 That is a very powerful -- a lot of public
11 -- because that is a really important issue to -- the
12 ability to advise the public, if they have a concern.

13 THE CHAIRPERSON: Sorry, I shouldn't have
14 left my mike on.

15 So, that would mean you would issue a
16 press release, you'd -- how would you do that?

17 DR. SCOTT: Yes. If necessary, it would
18 be -- it could be a release, it could be a communication,
19 it could be directed to a specific area of the community,
20 it could be advice or concerns that I'd direct to the
21 family physicians, or whoever was involving in treating.

22 I mean, we are involved in ongoing advice
23 about health concerns to both the public, either local
24 areas, provincially, or usually to health care
25 practitioners on an ongoing range of public health

1 issues.

2 THE CHAIRPERSON: I had one more question,
3 and I can't find the slide that -- all right, yes.

4 You probably explained, but when I was
5 looking at the slides again I couldn't quite understand
6 it. I can't give you a number, but the slide that you
7 put up is -- the first bullet is "Independence." It
8 refers to independence, and you refer to "by legislative
9 design," and then you make reference to the Health
10 Protection Act and Regulations. The second bullet is
11 "Ability to act" -- we just talked about that -- and
12 then the third bullet is, "Through the permitting process
13 of Nova Scotia Environment and Labour."

14 So that -- you mean by that -- could you
15 just explain the independence through the permitting
16 process of Nova Scotia Environment and Labour?

17 DR. SCOTT: What I mean is that the
18 intervention in that case would be through advice.

19 I mean, when a permit is released, the
20 process at the moment is that Nova Scotia Environment and
21 Labour will actually involve the Medical Officer of
22 Health in looking at, "What are the key issues?"

23 So, we would provide input into that, and
24 make recommendations for them. I am pretty sure that I
25 would have the authority to require things, but in

1 practice recommendations from the Medical Officer of
2 Health carry a tremendous amount of -- I use the term
3 "authority," within the provincial system.

4 THE CHAIRPERSON: Thank you.

5 DR. LAPIERRE: Under what circumstances,
6 and how would you go about conducting a risk assessment
7 on an issue?

8 DR. SCOTT: Well, in this sort of -- in
9 this sort of situation, a risk assessment, we would,
10 first of all, identify, "What is the issue of concern?"
11 and usually the issue of concern in practice tends to be
12 that people are concerned that there is a risk to their
13 health.

14 There often is a concern that there is
15 something happening where those individuals are involved
16 in some degree of exposure, and that exposure could -- is
17 the thought, "Are they harming them in the short term or
18 the long term?"

19 Risk assessments can be very quick. I
20 mean, one can look at that, because we get many issues
21 around that, and we would look at, in fact, whether there
22 was evidence there was some degree of exposure. We would
23 consult with expertise, and we would, if necessary, we'd
24 look at the literature, we'd identify if there actually
25 was that exposure. Was that exposure biologically

1 plausible to cause some degree of harm? And then we
2 would make some assessment of -- usually when a risk
3 assessment is made you make some judgment, and then, if
4 necessary, if we identify there is a risk we would be
5 involved in either providing risk -- recommendations to
6 deal with that risk or very commonly, and in conjunction
7 with that, communication. Because we obviously would
8 communicate the facts and communicate what we feel were
9 the true nature of that risk or not.

10 DR. LAPIERRE: And a second question
11 relates to Slide 15, I think, that you had, and it relates
12 to the second bullet and you indicate "an open and
13 transparent process for reporting air quality."

14 And, I guess, I'm interested in that first
15 bullet that you have. It says, "A process developed by
16 stakeholders." How would you see that developed and how
17 what do you understand by a stakeholder developed
18 process?

19 DR. SCOTT: Well, there are a couple of
20 things I think are important.

21 The stakeholder would mean that you would
22 obviously have a group, which is representative. I think
23 it needs to involve the public, I think it needs to
24 involve -- and I'm very strong in the area of -- I think
25 some of the health professional, because these area --

1 our people have some knowledge -- I think they're
2 involved in the planning, they're involved in the
3 assessment, they're involved in the continuing ongoing
4 analysis of the results.

5 For example, I mentioned earlier on my
6 colleague, Dr. Baikie, was involved in the mobile
7 incinerator in Goose Bay.

8 One of the processes she told me about,
9 was that in that situation they had a community group and
10 that community group and that community group was
11 presented with the ability to do some testing.

12 So they actually were able to do some
13 testing to do that, and hence had -- that was a very, I
14 think, a credible process, some degree of control within
15 that and auditing.

16 So, there were two parallel processes, so,
17 yes, there was some auditing that could take place, which
18 the community could continue to trust in.

19 So, I think it's important, whatever
20 process, that the community, as a whole, has some
21 credibility and trust in that.

22 DR. LAPIERRE: So you would see that
23 community group having direct access to information?

24 DR. SCOTT: Yes, I think that's really
25 important. In my experience the biggest concern or

1 anxiety comes up when people think that things are being
2 hidden and I think there's a lot of good -- I mean, my
3 work to date, I think there's a lot of good planning to
4 protect the public health here. There's an intent to do
5 the appropriate testing. And I think that should be as
6 transparent as possible.

7 DR. LAPIERRE: Okay, thank you.

8 MR. CHARLES: Dr. Scott, I think in your
9 presentation you mentioned the need for communication and
10 you've just spoken about it now with my colleague here.
11 And I guess my question is -- and it relates to your
12 reaction to the Proponent's proposals for communicating,
13 monitoring results and that sort of thing, generally, to
14 the community. Are you happy with the proposals as you
15 saw them?

16 DR. SCOTT: What I can say is, because
17 I've not provided detailed analysis that Dr. Badenhorst
18 was quite involved working with the Proponent. And he
19 was comfortable with -- but again, I think the Medical
20 Officer will continue to be involved and should be to
21 ensure that there is appropriate -- and the medical
22 officer can always release information to the public but
23 I -- this is integral -- needs to be integral to the ---

24 MR. CHARLES: All right. I notice also in
25 your presentation that you've got a new piece of

1 legislation that you're working with and that there are
2 provisions in that legislation for communication plans.
3 I'm just wondering if you've been able to --
4 communication plans and protocols responding to health
5 hazards and so on. Have you been able to make any
6 progress in developing these communication plans?

7 DR. SCOTT: Well, we -- even without this
8 new legislation, communication is an ongoing issue, a
9 very important issue in public health. And I'll give you
10 examples, West Nile Virus, the threat of West Nile Virus.
11 We have a coordinated approach which involves monitoring,
12 detecting that and we have a communication strategy
13 within that. The issue of Asian Influenza, it's very
14 similar. We've had incidents before where, which are
15 more relevant, where we've had spray programs. Where
16 we've had to be involved in providing communication so
17 even though the legislation is there, it's part of the
18 practice. There's things that we routinely do and
19 there's things that come up where we have to develop a
20 strategy to deal with an incident.

21 MR. CHARLES: Does the new legislation
22 provide you with any additional responsibilities or
23 authority in relation to communications?

24 DR. SCOTT: I've always assumed I've had
25 that authority. I think it just confirms that authority.

1 Well, from a historical precedent, the Medical Officer of
2 Health has the independence the public of risk.

3 MR. CHARLES: Discretion.

4 DR. SCOTT: Which is -- and it's always
5 been.

6 MR. CHARLES: All right. I also notice
7 that you do -- and my colleague talked about risk
8 assessments. I guess my question is, do you find it
9 within your responsibility under the new legislation or
10 otherwise to do health assessments as opposed to risk
11 assessments? In other words, collecting baseline data
12 about the current health of the community.

13 DR. SCOTT: Yes, we can do that and we
14 have done that under previous authority.

15 MR. CHARLES: And there are reports
16 available and you'll continue to do that, I take it, will
17 you?

18 DR. SCOTT: Well, the overall intent, one
19 of the core functions is surveillance and health
20 measurement. And one of the intents of the new
21 department is to enhance our ability to do that, not just
22 for the -- this community but for all parts of Nova
23 Scotia.

24 MR. CHARLES: Yeah. These studies are
25 pretty costly are they not?

1 DR. SCOTT: Well, it depends what you mean
2 by studies. I mean baseline studies involve taking data
3 that's already available or collected for administrative
4 purposes and then having an analysis of that.

5 MR. CHARLES: I see.

6 DR. SCOTT: We're not the only agency that
7 does that so I mean we -- obviously there are Cancer
8 registries, there are reproductive care programs as
9 registries but it's the importance of using the data
10 that's available -- and I mean that's -- there's a cost
11 to that but there are -- I mean, I have access to other
12 people in the system who do that.

13 MR. CHARLES: So you don't necessarily
14 generate the data yourself. You're looking for data
15 that's already there?

16 DR. SCOTT: Mostly we would access data.
17 We can be involved in the generation of data if it's
18 necessary.

19 MR. CHARLES: I guess that's the aspect I
20 was thinking of, it's costly to do that. Well, my final
21 question relates to something towards the end of your
22 presentation. And I think it's in -- well, it's your
23 recommendation, I guess, where you suggest that an
24 unplanned incident at the incinerator site during start
25 up or operation might derail the entire clean up process.

1 And I'm just wondering if you could give me some
2 clarification of the sort of incident that you were
3 thinking about. Were you thinking about a major incident
4 or you know, minor incidences or what?

5 DR. SCOTT: I think a major incident would
6 obviously be of concern. The -- my worry would be that
7 you know, the -- with fear would mean that someone might
8 see a more minor incident as major. And that's why I
9 think community buy in as understanding what was going as
10 part of the process is critical. I mean public
11 perception is very important, particularly in this clean
12 up process. And so I think the transparency what's going
13 on, the better informed the public are and aware the less
14 you have a situation where a minor incident is perceived
15 of as a major incident. But they still must be prepared
16 obviously. It's prudent to be prepared for any unplanned
17 incident.

18 MR. CHARLES: Well, I would agree with you
19 that the psychology is important but as you know,
20 machines are not necessarily perfect and they do break
21 down from time to time in minor ways or sometimes in
22 major ways. From your point of view is it the
23 transparency that's important? That is if something goes
24 wrong is it the important part that the public be
25 notified about it so they know what's happening?

1 DR. SCOTT: Yeah, they should be notified
2 of what's happening but notified of the facts and
3 notified if there is or is not a health risk which is why
4 Dr. Badenhorst is very much involved in making sure there
5 was enough information because the question will come, if
6 there is a, for example, exceedance of any level, the
7 question will come, what does this mean for my health?

8 MR. CHARLES: All right. Thank you.

9 THE CHAIRPERSON: Just one last question.
10 Your second recommendation is that the clean up must
11 address the long term socio-economic benefits which will
12 improve the health status of all residents. Fine then, I
13 don't suppose anybody would have a dispute with that but
14 are you comfortable that the clean up, in fact, does
15 address the long term socio-economic benefits or is there
16 something additional that needs to be done or is this in
17 reference to the future uses on the sites? Could you
18 elaborate a little bit about how either the panel or the
19 regulators or indeed, the Proponent might best fulfil
20 that recommendation?

21 DR. SCOTT: Well, I think there's a couple
22 of things. Obviously, during the clean up itself,
23 there's going to be used I guess appropriate up-to-date
24 technology. That means hopefully that there will be the
25 use and increased expertise of training of the residents

1 of Sydney and of Cape Breton. How can the opportunities
2 to utilize that experience be put in place. You have
3 institutions here such as UCCB which has some experience.

4 What will be learned? What -- I mean,
5 basically it's development of economic -- I use the term
6 economic power, things that could be turned to improve
7 the health of the community during the clean up process
8 itself. As to what is done with the result of that I
9 don't know. But I do -- last week, for example, I was in
10 the northeast of England visiting an area called Stockton
11 which had a lot of Coke Oven sites, etc. And I visited a
12 new university. And it had a medical school on it.
13 Queens University bought a campus and I was told at that
14 period of time that that used to be a Coke Oven site. I
15 mean, to me that was an example of something where we had
16 a legacy that would -- actually was part of revitalizing
17 the community. So I think there was a -- I think that's
18 something that needs to be kept in place throughout the
19 development with the municipality. Here's -- in a way I
20 use the term an opportunity.

21 THE CHAIRPERSON: Thank you. I'll now
22 provide an opportunity for other participants to ask
23 questions. I will turn first to the Sydney Tar Ponds
24 Agency. Do you have any questions or any points of
25 clarification you'd like to bring?

1 MR. POTTER: No questions at this time.

2 Thank you.

3 THE CHAIRPERSON: Thank you. Can I just
4 get an indication how many of the registered participants
5 have questions. I see Sierra Club. Mr. Marmon. Mr.
6 Brophy. Ms. MacLellan. The -- yes, the famous five.
7 And how many other people in the audience would think
8 that they might like to ask a question. I have one.
9 Okay, thank you. I'm going to start off with and ask --
10 we'll go through the roster in the order -- do we have
11 any government participants who have any questions? No.
12 So I'm going to start off then and ask you to start with
13 two questions. And I'll start with the Save Our Health
14 Care Committee.

15 OFFICE OF THE MEDICAL OFFICER OF HEALTH

16 --- QUESTIONED BY CAPE BRETON SAVE OUR HEALTH CARE

17 COMMITTEE (MARY-RUTH MACLELLAN)

18 MS. MACLELLAN: Through the -- thank you,
19 Madam Chair -- through you to the -- Dr. Scott, there's a
20 couple of questions regarding health. And then I have a
21 question regarding trust. The two questions regarding
22 health concern the particulate matter that will come out
23 of the stacks as well. I rechecked this again at lunch
24 time and the person I spoke to said there should be
25 concern if the particulate matter is five. That

1 particulate matter of five will go down into the lower
2 lung. I was wrong when I said the upper lung this
3 morning. It will go into the lower lung.

4 And usually when they are treating
5 symptoms and they have to in -- administer medications,
6 they have to use a consistency of five to get it to go
7 into the lower lung. They've said that the particulate
8 matter will be monitored for 2.5. How do you think that
9 a particulate matter of 2.5 is going to take care of the
10 five that may possibly come out of the stacks or out of
11 any of the other contamination. How's that going to
12 impact our health?

13 DR. SCOTT: Well, to my knowledge PM 2.5
14 is the key thing for which there's the most evidence of
15 detrimental effects to health. This issue of five, I
16 would have to go and talk to my respiratory colleagues to
17 see what was the true significance of this.

18 MS. MACLELLAN: Department of Labour this
19 morning stated that they're presently revising that
20 particular issue anyway. So I think it's important to
21 find out about that five. Perhaps you can take that as
22 an undertaking to the panel.

23 THE CHAIRPERSON: Well, I don't know --
24 well, what's -- whether we require an undertaking at the
25 moment but do you have anything else to say, Dr. Scott?

1 Is this -- in terms of how this might be looked at in
2 drawing up a monitoring program?

3 DR. SCOTT: I think that the monitoring
4 program as in most situations needs to look across what
5 is the most up-to-date evidence that's approved in
6 different jurisdictions for requiring to monitoring and
7 then it needs to monitor what is appropriate and that's
8 in discussion with, you know, the Proponent and in
9 discussion with Department of Labour and look at the
10 public health perspective of that.

11 THE CHAIRPERSON: And your previous answer
12 indicated as far as you know right now the standard in
13 other jurisdictions is 2.5 and they don't separately
14 monitor for five?

15 DR. SCOTT: You would have to ask air
16 quality expertise. What I do know is that PM 2.5 is the
17 degree of concern from the health point of view.

18 THE CHAIRPERSON: Do you have a second
19 question?

20 MS. MACLELLAN: Yes, the second question
21 is regarding dioxins that may possibly come out of the
22 stacks as well.

23 Dealing with a population that already
24 carry a heavy body burden of toxins, how will this impact
25 a person with a weakened immune system?

1 THE CHAIRPERSON: How will the project ---

2 MS. MACLELLAN: How will the possible
3 release of dioxins impact our health?

4 DR. SCOTT: The intent, as I understand
5 the intent, is to have a system where, in fact, you
6 prevent as much as possible the admission or exposure of
7 any individual to any dioxin, and, at the same time, the
8 guidelines are based on those which are protective of
9 some of the most vulnerable in society.

10 That's the way the toxicologists tend to
11 work and guidelines come around, and there are many
12 protective factors built into those.

13 MS. MACLELLAN: Are you aware of what
14 dioxins can cause?

15 DR. SCOTT: I have been aware when I was
16 very much involved in a situation but, again, like
17 anything, I've relied on Dr. Badenhorst to keep up to
18 speed on all of the health issues of the relevant -- in
19 any areas like this, with this concern, and I would work
20 with the toxicologist whose area of expertise they are
21 and get the most up-to-date information.

22 MS. MACLELLAN: As my Public Health
23 Officer for the province, I'm asking you to please
24 undertake to do that on behalf of the citizens of this
25 community.

1 My next question to you would be one on
2 trust. Having dealt with some past issues regarding
3 health issues and your response to those issues, and the
4 fact that we've had to lobby our local people to get
5 changes made on our own without your help, I'm wondering
6 how we can assure our children that they will be safe,
7 and that you will continue to monitor what's happening
8 here on the site.

9 Can we, as the public, go to you and ask
10 you to please, as our Officer of Health, monitor what's
11 happening here on an ongoing basis and report back to us
12 in a public forum?

13 DR. SCOTT: The Medical Officer of Health
14 will be involved in the monitoring, whoever that Medical
15 Officer of Health will be, the same as Medical Officers
16 in other jurisdictions, other parts of the province are.

17 I think it's important -- ideally I would
18 -- I'm trying to recruit a Medical Officer of Health who
19 would be -- who can live, just like Dr. Badenhorst is,
20 here, who works -- in addition, works with his clinic
21 colleagues working in the district, because I had
22 realized the issue of trust and credibility is important.

23 THE CHAIRPERSON: Okay, thank you, Ms.
24 MacLellan.

25 MS. MACLELLAN: The other thing was, I was

1 just going to ask him if he would commit to an
2 epidemiological study.

3 THE CHAIRPERSON: You're moving on to a
4 third question, but -- you've put it on the table, but no
5 more questions, please, no follow-up.

6 Dr. Scott, do you want to respond to that?

7 DR. SCOTT: Well, I'm not sure what -- we
8 have to have clarification of what we mean by
9 epidemiological study.

10 THE CHAIRPERSON: Very briefly a
11 clarification, then.

12 MS. MACLELLAN: Well, in the past --
13 you're familiar with Dr. Judy Gurnsey and the
14 epidemiological study that she endeavoured to try to do
15 here a number of years ago, and when she started coming
16 up with all the things that were wrong in the system she
17 got such a hard time over it that she had a lot of flak
18 and stuff and she couldn't deal with it, and had to walk
19 away from it.

20 Without going back and looking into the
21 exact definition, I am not going to -- I don't have a
22 scientific background, so I'm not going to do it, but I
23 did speak -- had someone speak to Dr. Gurnsey and asked
24 her to come to help us do our presentation, and she
25 doesn't want to come anywhere near Sydney.

1 Thank you.

2 THE CHAIRPERSON: Thank you.

3 Two quick questions by Sierra Club.

4 --- QUESTIONED BY THE SIERRA CLUB (BRUNO MARCOCCHIO):

5 MR. MARCOCCHIO: Thank you. We do have a
6 number of questions for the Medical Officer of Health, so
7 I do hope we have an opportunity to ask another round of
8 questions.

9 Dr. Scott, I am assuming that you do, in
10 fact, subscribe to the precautionary principle that
11 states "acting in the face of uncertain knowledge about
12 the risks from environmental exposures is the prudent
13 thing to do."

14 And in the case of the incinerator, recent
15 review of the health effects found that 2/3 of studies
16 showed a positive exposure to disease association and --
17 disease association with both cancer, mortality incidents
18 and prevalence, and some pointed to a positive
19 association with congenital malformations.

20 Siting an incinerator and not following
21 the minimum guidelines, promised to us by the Government
22 of Canada, of 1500 metres is a reckless act, and I hope
23 that you, when you respond to the question that I put,
24 can give us your reassurances that you will, at minimum,
25 reassure is that the guidelines set out in the CCME, that

1 were promised us by the Federal Government, certainly
2 will be underscored and reinforced by you to help us
3 ensure that unnecessary health risks are avoided.

4 But I want to ---

5 THE CHAIRPERSON: Mr. Marcocchio, you just
6 referenced -- I guess this is a preamble to a question --
7 well, it is a preamble to a question, but in your
8 preamble you've cited something, I don't know what you
9 cited.

10 MR. MARCOCCHIO: I will make the reference
11 available.

12 THE CHAIRPERSON: It's very hard, I think,
13 to ask anybody questions where you read out an extract
14 from something that they've not seen, and that we've not
15 seen, and then you ask them to kind of react.

16 So if you could be sort of careful about
17 doing that, and if it's something you will make available
18 to us, we'd appreciate that.

19 MR. MARCOCCHIO: Yes, I'm reading from ---

20 THE CHAIRPERSON: And so your question for
21 Dr. Scott is, your first question?

22 MR. MARCOCCHIO: Well, my first question
23 references a risk assessment.

24 Risk assessment is called by the British
25 Society for Ecological Medicine with moderators Dr.

1 Jeremy Thompson and Dr. Honor Anthony, is a method, an
2 inexact method:

3 "Risk assessment is a method
4 developed for engineering, but is
5 very poor for assessing the
6 complexities of human health.
7 Typically, it involves estimating the
8 risk to the health of just 20 out of
9 the hundreds of different pollutants
10 emitted by incinerators. There are
11 hosts of problems with this type of
12 assessment; lack of accurate data on
13 pollutants, lack of toxicological
14 data on the majority of chemicals,
15 the fact that an increasing
16 proportion of people react to low
17 levels of chemicals, the fact that in
18 the real world pollutants come in
19 mixtures and can have damaging
20 synergistic effects, and that the
21 foetus and breast-fed baby take in 50
22 times more pollutants than adults
23 relative to their weight, and that
24 there is virtually no toxicological
25 data..."

1 THE CHAIRPERSON: Mr. Marcocchio, I think
2 you're doing just what I said is very difficult for us to
3 cope with in questioning. You're reading a long section
4 from a report that we don't have, is that correct? Or am
5 I wrong?

6 MR. MARCOCCHIO: Yes, that's correct, but
7 I do wish to ---

8 THE CHAIRPERSON: That kind of material is
9 -- we need to have that brought before us, and it's best
10 presented to us in your presentation, and then we can
11 have it, we know where it comes from.

12 MR. MARCOCCHIO: Well then, I understand
13 ---

14 THE CHAIRPERSON: Just a moment please.
15 If you are reading out long sections and then going to
16 ask a question of any of our presenters, I don't think
17 that that's a very productive use of this questioning
18 time. It's very difficult for anyone to respond to
19 something that they haven't seen.

20 But your question at the end of this is,
21 is what? Maybe you could pose the question.

22 MR. MARCOCCHIO: Well, the question at the
23 end of this is a general one, and it was our intention
24 to, in fact, introduce this when we were presenting
25 testimony.

1 But these issues of the Chief Medical
2 Officer -- unless he can agree to be here after our
3 medical expert addresses these questions of health on the
4 15th of August, perhaps you should give me some latitude
5 to pose -- make these general statements and ask a
6 general question at the end of it.

7 THE CHAIRPERSON: I'd like you to ask your
8 question, and if there are questions that the panel --
9 that you can persuade the panel, and you may well be able
10 to persuade the panel, I don't know, in the course of
11 your presentation that this is an area that the panel
12 really needs to pursue in terms of getting a response
13 from the Medical Officer of Health, I think the panel
14 would then be -- and we have the power to do that, to
15 forward questions to the Medical Officer of Health. and
16 to get some response, either he may return, or in
17 writing.

18 But could we follow the normal way all of
19 us have been asking questions from now on, and please, by
20 all means, bring this material to us in your
21 presentation, and make your case for why we need to get
22 some answers from various parties.

23 Dr. Scott, do you plan to be participating
24 in other parts of this hearing, or would you ---

25 DR. SCOTT: I'd not planned that, no.

1 MR. MARCOCCHIO: I'm sorry, I missed that
2 comment.

3 THE CHAIRPERSON: Dr. Scott is not
4 planning to return, but that doesn't mean that we can't
5 pose questions to him and obtain some answers.

6 But could you ask your question, please.

7 MR. MARCOCCHIO: Yes. It's the opinion of
8 this British Society for Ecological Medicine that it's
9 particularly important that incinerators should not be
10 sited in deprived areas, or areas with high rates of
11 mortality where their impact is likely to be greatest.

12 I think that fairly accurately describes
13 the CBRM with the elevated rates of incidents, mortality
14 and morbidity, with cancer and elevated rates of birth
15 defects.

16 Don't you think, Dr. Scott, particularly
17 in light of the fact that with respect to your mandate of
18 health promotion, that all of the costs need to be
19 included, and that the EC commission has indicated that a
20 single incinerator can cost the taxpayers up to 50
21 million pounds per year in health care costs, that it's
22 imprudent to be supporting a toxic waste incinerator in a
23 community already showing very positive signs of health
24 outcomes much less favourable than the rest of the
25 province?

1 DR. SCOTT: I think if this is one of the
2 recommendations for a means of remediation, it should be
3 performed in a manner that uses the most appropriate up-
4 to-date guidelines that are available in Canada.

5 MR. MARCOCCHIO: Dr. Scott, I don't seem
6 to recall hearing a response to my question about whether
7 you think that it is not reckless, with respect to public
8 health, to be ---

9 THE CHAIRPERSON: I think, Mr. Marcocchio,
10 it's my -- the questions, as you know, the procedure is
11 to come through the Chair. Of course, just for ease,
12 I've been allowing people to address them more directly,
13 but I think it's really the Chair's prerogative to
14 request more answers.

15 What I will do, though, is I will just
16 paraphrase the question to Dr. Scott as I understand
17 you're asking, and I will ask Dr. Scott whether it's your
18 understanding -- do you believe there is a particular
19 concern about siting hazardous waste incinerators in
20 areas which may be considered to be economically or
21 socially, or in other ways, perhaps, somewhat deprived or
22 less developed? I'll have to be careful with all this
23 language. This is what I took as the essence of Mr.
24 Marcocchio's points.

25 I mean, we have heard this point with

1 respect to siting of other waste facilities, it does get
2 raised as a concern in terms of siting of the landfills,
3 and so on.

4 So I just wonder if you could reflect on
5 that, and then I'll ask Mr. Marcocchio to ask his second
6 question, and then we'll move on to the next questioner.

7 DR. SCOTT: Obviously Mr. Marcocchio is
8 quoting from statements which I suppose have come from
9 some degree of evidence or analysis of that. Evidence
10 can be interpreted in different ways.

11 I've nothing to suggest it would be
12 inappropriate to use the incinerator in this process
13 here. I'd certainly welcome the ability to look at any
14 evidence that is available.

15 THE CHAIRPERSON: And do you have another
16 question, please?

17 MR. MARCOCCCHIO: Yes. Dr. Scott, with
18 respect to the arsenic contamination in Frederick Street
19 four or five years ago, there was a number of -- there
20 was soil sampling and properties found and children found
21 to have elevated levels of arsenic in their bodies.

22 Those properties that volunteered for
23 testing in the first round were given the option for
24 remediation. None of the other residents were given the
25 opportunity and, in fact, I seem to recall your office

1 saying that if you did not apply for a testing of your
2 properties in the first round of testing, that you would
3 not quality for subsequent testing.

4 How do you fit that into expecting us to
5 think that your approach to public health would be more
6 rigorous in the aftermath of more disturbance of that
7 site, and the construction of a toxic waste incinerator?

8 Your mandate seems to be damage control
9 rather than public health.

10 THE CHAIRPERSON: Dr. Scott, would you
11 like to comment on that?

12 DR. SCOTT: My job is to use evidence to
13 evaluate and present recommendations on any degree of
14 public health risk, or lack of. That's what I do, that's
15 what I do with the most up-to-date evidence and
16 consulting and expertise. That's what I will continue to
17 do.

18 MR. MARCOCCHIO: But that was my point,
19 Dr. Scott, you did not gather evidence when there was
20 abundant proof that the contaminated -- the community was
21 contaminated. You quickly shut the door and refused to
22 do the testing ---

23 THE CHAIRPERSON: Thank you, Mr. ---

24 MR. MARCOCCHIO: --- that would have
25 delineated ---

1 THE CHAIRPERSON: Thank you, Mr.
2 Marcocchio, but that will be the end of the questioning.
3 So thank you.

4 Mr. Marmon, you have a question?

5 MR. MARMON: Yes, thank you, Madam Chair.

6 Dr. Scott, in the presentation, and I kind
7 of summarize this a bit, you stated that a catastrophic
8 effect at the incinerator could cause a psychological
9 effect on the residents in the area, but, given the past
10 history of incineration in the CBRM, isn't it a fair
11 statement that just the announcement of an incinerator in
12 a community would cause a detrimental psychological
13 effect?

14 DR. SCOTT: Well, obviously you're a
15 better expert in the community than I am, you're part of
16 the community, but I'm sure, and I know from talking to
17 colleagues, that members of the community were concerned.
18 That's why I think open transparent information helps
19 deal with any concerns.

20 MR. MARMON: Yes, Madam Chair, and further
21 to that transparent information, we are all aware of the
22 Walkerton -- of Walkerton, and how the paper work was all
23 in place, but the governing bodies had no idea that there
24 were some tampering with results of what was supposed to
25 be checked, and everything else. So everybody felt

1 everything was going along just great, and all of a
2 sudden we have a problem in this country that became
3 quite well known.

4 And I do appreciate Dr. Scott thinking
5 that openness with the community is very important, and
6 that perhaps a community committee would have some powers
7 to even check on how the operation is going, and whatever
8 else have you, but, in reality, I think most operators of
9 an incinerator would say "Look, I can't take the legal
10 responsibilities of having people stopping in here
11 checking on things" among other things. And besides
12 that, like most normal people in the area, probably
13 wouldn't have the ability to assess the data to decide if
14 it is realistic, or if it has been tampered with.

15 I mean, I could take a pyrometer and go
16 over to where the sensor is, put a torch on it and all of
17 a sudden my temperatures are just perfect. I mean, how
18 would somebody off -- and I don't mean this probably as a
19 question to Dr. Scott but more as an observation.

20 THE CHAIRPERSON: I was just going to say
21 that, to be fair, I did ask Mr. Marcocchio ---

22 MR. MARMON: I don't expect him to answer
23 that.

24 THE CHAIRPERSON: --- to get to the
25 question and stop making statements. So, to be fair, I

1 need to ask you to come to a question or ---

2 MR. MARMON: Okay. Can you think of any
3 other way that a facility could be audited, because all I
4 hear from government agencies is that "We monitor
5 compliance, we monitor compliance" but nobody actually
6 checks on "You're doing it, and let's see if your
7 readings are right."

8 DR. SCOTT: Well, I mean, you could have a
9 situation where a community group had the ability to
10 engage someone who had the expertise to do that auditing
11 and report it back independently to that group. I mean,
12 that's one example, but there may be others.

13 MR. MARMON: Thank you, Madam Chair.

14 THE CHAIRPERSON: Thank you, Mr. Marmon.

15 Mr. Ignasiak, did you -- had you indicated
16 -- you had.

17 MR. LES IGNASIAK: Madam Chair, actually
18 you asked already the questions that I intended to ask,
19 but on the same subject, the long-term benefits, I would
20 like to give you an example of something that I found on
21 the website yesterday, late in the evening.

22 THE CHAIRPERSON: Does this lead to a
23 question?

24 MR. LES IGNASIAK: Yes.

25 THE CHAIRPERSON: Quickly?

1 MR. LES IGNASIAK: Quickly, I promise:
2 "A site contaminated with organics
3 and metals was encapsulated several
4 years ago and converted into a golf
5 course. Recently, experts discovered
6 high levels of arsenic on land
7 covering the first 9 holes of the
8 course. The company that capped the
9 contaminated site now proposes that
10 the toxic golf course be capped again
11 by laying waterproof plastic material
12 over it and covering the top with
13 soil at an additional cost of about
14 \$10 million."

15 My question is we really have to be
16 concerned about things like that when we are talking
17 long-term benefits.

18 THE CHAIRPERSON: Again, you know what
19 I'm going to say, don't you, I'm like a broken record.
20 You've cited something. Do we have it, is it on the
21 public record?

22 MR. LES IGNASIAK: Yes, you do have it.

23 THE CHAIRPERSON: We have it in your
24 presentation?

25 MR. LES IGNASIAK: No, you do have from a

1 different source. Actually, it is part of the
2 submission.

3 THE CHAIRPERSON: Dr. Scott, are you able
4 to -- is that a question you can respond to?

5 DR. SCOTT: Well, I mean, in general, as I
6 understand it, there's no plan for what will happen with
7 the site afterwards, but, I mean, obviously the
8 appropriate approach is to make sure that what is done
9 continues to be something that's safe. I mean, that
10 would be just normal for me.

11 THE CHAIRPERSON: Ms. Ouellette, and then
12 I have one other person, then we'll take a brief break.

13 MS. OUELLETTE: Hi, my name is Debbie
14 Ouellette.

15 They talked about slag here quite a bit
16 this morning, so I just want to ask a question on that.

17 What if slag was used as a fill on a
18 resident's property, and the resident bought the property
19 without knowing this, would there be a health hazard?

20 THE CHAIRPERSON: Does this question apply
21 to the current project? This is, is slag from SYSCO,
22 which is not within the project boundaries, being used on
23 a residence property which is not within the project
24 boundaries. I'm not seeing the connection.

25 So before I would ask Dr. Scott to address

1 that, I -- can you make that connection for me, please.

2 MS. OUELLETTE: Here in Sydney, a lot of
3 sill (sic) has been used on properties as a fill, and
4 then they reseeded it with soil and grass, but then if
5 you buy a property, you don't know if that slag is on the
6 property unless you see it.

7 So like what I'm saying is it came from
8 the slag pile, there would be no other place where it
9 came from, so my concern, if the slag was on the property
10 would it be a health hazard.

11 THE CHAIRPERSON: So this is slag that
12 originated on the Coke Ovens site, that's what you're ---

13 MS. OUELLETTE: Or the steel plant.
14 There's a big pile of it over there, and a lot of it was
15 used for fill to make roads, to make -- that's what I'm
16 just saying, I just want to know if ---

17 THE CHAIRPERSON: I'm having trouble still
18 relating this to the project we're assessing.

19 MS. OUELLETTE: Well, I was just
20 addressing this to the ---

21 THE CHAIRPERSON: Dr. Scott, do you have
22 any comments on this? I'm not going to push this one
23 because I can't see the connection here.

24 DR. SCOTT: Well, I'll give a general
25 answer. If you have slag, and the slag contains

1 chemicals, and if those chemicals are potentially -- if
2 an individual is exposed to those chemicals so those
3 chemicals enter the body in a concentration that can
4 cause harm, it could be. But all those things need to
5 take place in any scenario for that to happen.

6 THE CHAIRPERSON: Yes.

7 MS. OUELLETTE: The reason why I say that,
8 like the Coke Oven Site is -- they made a new road with a
9 lot of the slag. People are up there every day driving
10 their cars, you know. That's why I'm saying it's used as
11 a fill, and that's why my question was if it was used on
12 a property would it affect a resident.

13 THE CHAIRPERSON: I'm still struggling to
14 make the connection with it, so thank you very much.

15 There was, I believe, one other person,
16 yes, from the ---

17 MS. HEARNE: Thank you. I'm Ada Hearne,
18 former Frederick Street resident.

19 Dr. Scott, it's been a while. My question
20 for you today is about the testing that was done on our
21 children, to refresh your memory, about three or four
22 years ago.

23 I'm wondering why there was no follow-up
24 on the children who were tested positive for high levels
25 of lead, arsenic and other toxins.

1 THE CHAIRPERSON: Again, I'm going to have
2 to interject, and I hate to do this because I know this
3 is a serious issue and something you are very concerned
4 about, but I think you need to make the connection, for
5 our purposes of this forum with the project.

6 Can you make a connection between your
7 question and the proposed project and the effects of the
8 proposed project, and then I can let it go forward if you
9 can do that.

10 MS. HEARNE: Well, my concern is that our
11 children have been tested positive for toxins in the
12 past, and in the event of an incinerator we have great
13 concern that their health is again continuously
14 approached by toxins, right?

15 THE CHAIRPERSON: Dr. Scott, do you have
16 some response to that question?

17 DR. SCOTT: My office was involved in a
18 testing programme. Arsenic and lead, those were the only
19 two chemicals that were tested on the group of
20 individuals living around the north Coke Oven Site. It
21 was done with informed consent with involvement of
22 paediatricians and physicians in the area. We didn't
23 detect any children with lead above guideline levels.
24 There were two individuals who ended up with arsenic
25 above levels who were investigated and followed up by a

1 paediatrician.

2 If there were any situation in the future
3 that required any biological testing or similar
4 programmes or issues, I would ensure that the appropriate
5 standards, which involved informed consent and
6 confidentiality, and ensuring appropriate attention from
7 the clinical staff, took place, same as that programme.

8 MS. HEARNE: Okay.

9 THE CHAIRPERSON: Do you have a second
10 question?

11 MS. HEARNE: Just something about that
12 one, I don't know if he actually meant what I was saying.

13 There was children tested with high levels
14 and there was never a follow-up, and I thought maybe some
15 had and some hadn't, but the parents that I spoke to said
16 that when their children was tested that there was never
17 even a phone call, and I'm a little concerned about that.

18 There's children today, and you know this,
19 that are experiencing difficulties like speech
20 impediments, co-ordination difficulties, depression and
21 other medical conditions, and I don't want to name a name
22 but I know you were involved with one in particular, and
23 she was promised from you, and also the medical staff in
24 Sydney, for follow-up, and has not ever received a phone
25 call.

1 THE CHAIRPERSON: I think that we've
2 probably gone as far with this line of questioning for
3 this project.

4 MS. HEARNE: Okay, can I ask ---

5 THE CHAIRPERSON: Do you have a second
6 question that's connected to the project?

7 MS. HEARNE: The PCB fire that was at the
8 steel plant, do you remember that, '94/'95, can you just
9 give me a little -- I guess what I want to know is how do
10 you evacuate, how long was the evacuation, if there was
11 an evacuation, of the people?

12 THE CHAIRPERSON: And this is connected to
13 ---

14 MS. HEARNE: Well, I guess it's safety
15 measures, you know. Things happen over there that people
16 are not notified in time. What do we do, where do we go,
17 kind of thing. I guess it would be EMO maybe, but I know
18 Dr. Scott had some input on this in '94/'95.

19 THE CHAIRPERSON: Dr. Scott, are
20 contingency plans for, first of all, in your -- well,
21 first of all, are -- such contingency plans for
22 evacuation, would you contribute to that if they were
23 necessary?

24 DR. SCOTT: I might be asked, you know, in
25 terms of presented with scenarios and asked for what

1 might be the potential health effects, but I wouldn't see
2 that as my responsibility to develop that, and I would
3 likely, if there was an instance, my office would be
4 involved in assessing any health risk and provide a
5 communication, that's a rule of the office.

6 THE CHAIRPERSON: Okay.

7 MS. HEARNE: So basically what I guess I
8 am asking is can you be trusted to protect us is my
9 question, I guess, to be point blank, because we don't
10 ---

11 THE CHAIRPERSON: Well, I think that's --
12 you know, that's a general question, and I think it is
13 one that the panel is clearly -- we're interested in
14 exploring that, not just with Dr. Scott and his office,
15 but all regulators. So we will pursue those. So thank
16 you for bringing that to our attention.

17 MS. HEARNE: Thank you.

18 THE CHAIRPERSON: I'm going to now just
19 take a very brief break. I think -- I just want to
20 confer with my colleagues for a moment, please.

21 We are going to take a 5-minute break now,
22 and then we're going to bring on our next presenter.

23 Thank you very much to Dr. Scott and your
24 colleague, and we will be back in 5 minutes.

25 Excuse me, I'm sorry, Mr. Brophy has --

1 this is true, Mr. Brophy was on the list and I neglected
2 to put his name. I apologise, Mr. Brophy. I apologise
3 to everybody who got up.

4 So Dr. Scott, just one more or two more
5 questions from Mr. Brophy.

6 MR. BROPHY: Thank you very much, Madam
7 Chair. We all make oversights at time.

8 Dr. Scott, would it be your learned
9 opinion that a person who had been exposed to past
10 contaminant exposures, resulting in what is referred to
11 as body burden, would be at greater risk to further
12 exposures than someone not previously exposed?

13 DR. SCOTT: The last time I asked that to
14 toxicologists was because the issue came up in terms of
15 calculation of what were the levels. I was told not, and
16 I'm not aware of anything that has changed that, but
17 that's a question I think a toxicologist is better able
18 to answer.

19 MR. BROPHY: Well, I thought with your
20 great experience, Dr. Scott, you would have been able to
21 answer that very easily. However, I do have another one.

22 Previous studies indicate, of course, that
23 Nova Scotia has the highest cancer rates across this
24 country, and within Nova Scotia Cape Breton County again
25 has higher cancer rates for certain cancers, and within

1 Cape Breton County Sydney, once again, has higher cancer
2 rates for certain cancers, is that not accurate?

3 DR. SCOTT: Yeah, that's accurate, there
4 are -- Sydney certainly has certain cancers that are
5 high.

6 MR. BROPHY: Having acknowledged that, Dr.
7 Scott, would you be comfortable yourself in making the
8 following statement: Sydney residents do not have a
9 greater cancer risk than persons residing elsewhere in
10 Cape Breton County?

11 DR. SCOTT: Can you repeat that, I didn't
12 quite understand the question or the statement.

13 THE CHAIRPERSON: I believe you're quoting
14 from something, Mr. Brophy. Could you be specific what
15 you're quoting from?

16 MR. BROPHY: I asked Dr. Scott if he would
17 be comfortable himself in making this following
18 statement: Sydney residents do not have greater cancer
19 risks than persons residing elsewhere in Cape Breton
20 County.

21 DR. SCOTT: It would depend on the cancer,
22 and we need now to look at what is the most recent data
23 on cancer from Cancer Care Programme.

24 MR. BROPHY: The reason I raised that, we
25 find that stated in Volume 1 of our EIS, and I don't

1 think that statement is accurate, having put on the
2 record what I just read and what you acknowledged.

3 Thank you very much.

4 THE CHAIRPERSON: Thank you very much, Mr.
5 Brophy.

6 We are now going to take a 5-minute break
7 and then our next presenter is coming forward.

8 MR. MARCOCCHIO: I have one brief ---

9 THE CHAIRPERSON: I'm inclined to say no,
10 but if your question -- I do try to accommodate people,
11 as you can tell I am fairly flexible. Will it be brief?

12 MR. MARCOCCHIO: Yes.

13 THE CHAIRPERSON: And not -- and something
14 that is straightforward. The question is coming to me
15 and then we'll see what it is.

16 MR. MARCOCCHIO: Through the Chair, I
17 would like Dr. Scott to indicate what measures the
18 Department of Health and his office took to protect the
19 residents of the Cape Breton Municipality when, four of
20 the last five years of the operation of the CBRM
21 incinerator, the only testing for dioxins and furans in
22 the compliance testing failed to meet the targets for
23 compliance with those permitted requirements for dioxins
24 and furans.

25 What action, with obvious evidence that

1 the incinerator was not performing in a manner that was
2 protective of human health, did Dr. Scott and his
3 department take to protect the health of the residents of
4 the CBRM?

5 THE CHAIRPERSON: Thank you. Yes, we
6 certainly have heard before -- there's been questions
7 asked about the records in terms of the solid waste
8 incinerator and compliance and so on. Do you have some
9 comments or an answer for that, please, Dr. Scott.

10 DR. SCOTT: Well, all I know is at that
11 point of time, Dr. Badenhorst was here, he was the
12 Medical Officer of Health, and I'm not sure of the degree
13 of involvement he had with Environment and Labour issues,
14 or what were any true health threats around it.

15 MR. MARCOCCHIO: Well, just a point of
16 correction. Dr. Badenhorst was only here for
17 approximately two years, and the question that I asked
18 went back four or five years.

19 So most of the exceedances were when there
20 was no Medical Officer of Health in Sydney. Dr. Scott
21 would have been solely responsible at that time.

22 THE CHAIRPERSON: Okay. Well, thank you
23 very much for that question. Do you have anything else
24 that you wish to add to your response, Dr. Scott? No?
25 Okay. Well, thank you very much for your presentation.

1 We will now take five-minutes break, and
2 we will then come back and it will be Nova Scotia
3 Transportation and Public Works.

4 --- RECESS: 2:25 P.M.

5 --- RESUME: 2:24 P.M.

6 THE CHAIRPERSON: I'd like to resume our
7 hearing. Sorry for the slightly longer break, but maybe
8 I shouldn't apologise for that.

9 We welcome our next presenter from the
10 Nova Scotia Transportation and Public Works. So you have
11 40 minutes for your presentation. Feel free to take
12 less, I often encourage people. However, you have 40
13 minutes.

14 MR. CAMPBELL: I will hope to take less.

15

16 --- PRESENTATION BY NOVA SCOTIA TRANSPORTATION AND PUBLIC
17 WORKS (MR. GARY CAMPBELL)

18 MR. CAMPBELL: Good afternoon, and thank
19 you, Madam Chair, and panel members.

20 My name is Gary Campbell, and I'm with --
21 I'm the Executive Director of Operations with the Nova
22 Scotia Department of Transportation and Public Works, and
23 I'm also the provincial lead on the Tar Ponds Cost-Share
24 Agreement.

25 I'd like to begin by thanking the panel on

1 behalf of the department and the province for this
2 opportunity to make a presentation on an environmental
3 project that we have substantially struggled with for,
4 golly, well over 20 years now. And to emphasize that, I
5 have a press clipping here, and the headline is "Minister
6 turns first sod on Muggah Creek clean-up" and it's
7 actually Minister of Environment Roger Bacon back in the
8 70s, so just to emphasize that we have been involved for
9 some time.

10 I personally have been involved in the
11 project for over 16 years, so you can understand the
12 level of concern that we have to see this project finally
13 move forward.

14 From a provincial standpoint, we also have
15 a responsibility for remediation and commercial
16 redevelopment of the adjacent 185-hectare or 450-acre
17 SYSCO site.

18 THE CHAIRPERSON: Mr. Campbell, I have to
19 interrupt you for a second. I'm getting a sign from our
20 sound person, could you just come a little closer to the
21 mike.

22 MR. CAMPBELL: Okay, sorry, I was hearing
23 feedback and I thought I was actually too close, so I
24 moved back. Sorry.

25 THE CHAIRPERSON: No problem.

1 MR. CAMPBELL: Anyway, so we tend to view
2 this project a bit of a larger perspective as being
3 critical for the revitalization of the central core of
4 the City of Sydney, and key to this for us is putting
5 this burdensome legacy of the Tar Ponds and Coke Ovens
6 behind us.

7 To highlight the negative impact that the
8 Tar Ponds have had on the economy of Sydney on occasion,
9 on several occasions I have been asked by our Department
10 of Economic Development to meet with companies who have
11 expressed interest in locating in Sydney but were
12 concerned by what they had heard regarding the Tar Ponds.

13 We've also had consultants who have
14 expressed concern about bidding on major projects because
15 they would have problems relocating key staff to Sydney.

16 Actually in 2001 we had to travel to New
17 York to meet with the major insurance companies because
18 local contractors were having problems bidding on
19 demolition projects -- and I mean simple structures -- on
20 both the Coke Ovens and the SYSCO site, due to their
21 inability to obtain the required insurance coverage.

22 Local brokers were just simply unable to
23 get them the insurance there was so much concern about
24 this project, and at the end of the day we provincially
25 put in place what's called an owner controlled wrap-up

1 insurance project where the people that were bidding on
2 projects would still be able to bid with their regular
3 amount of insurance and we would top it up.

4 I simply make these points to emphasize
5 the importance of your work over the next coming weeks in
6 reviewing the environmental acceptability of the
7 remediation plan prepared jointly by the Federal and
8 Provincial Governments leading to this Environmental
9 Impact Statement submitted by the Tar Ponds Agency.

10 I'm sure from the work you've done to date
11 there's no need for me to review the extensive scientific
12 studies undertaken on the site, the thorough review of
13 technologies, or the intense -- and everyone knows how
14 intense that was -- public participation process that led
15 to the Joint Action Group's recommendation to
16 governments.

17 With this recommendation, which I actually
18 hold the original of, and recognizing there was no clear
19 consensus on the 10 options considered, the two levels of
20 government undertook an extensive review of JAG's work,
21 and the results of more than 1700 workbooks. And I think
22 you all know each of those workbooks took well over an
23 hour or more to complete, and to have 1700 people willing
24 to prepare these, the local residents, is pretty
25 phenomenal.

1 This joint review by the two levels of
2 government led to the negotiation of a \$400 million
3 Memorandum of Agreement outlining a project which is now
4 before you.

5 As a clear indication of the province's
6 resolve to address this challenge, former Premier Hamm
7 personally signed the agreement on May 12th, 2004, and,
8 to quote the former Premier of that day, and, to start
9 the quote:

10 "After years of false starts and
11 disappointments for the people of
12 Sydney, we are determined, now more
13 than ever, to get the job done. The
14 people of Sydney have waited too long
15 for a solution."

16 The Premier has given his complete support
17 to the project, and appointed the Department of
18 Transportation and Public Works as the province's lead on
19 the cost-share agreement.

20 On September 2nd, 2004, the Sydney Tar
21 Ponds Agency was established as a single purpose special
22 operating agency to implement the project, and I believe
23 the Tar Ponds Agency is the first and, I think, the only,
24 to date, special operating agency in the province.

25 The province has developed a good working

1 relationship with our federal partners, Public Works and
2 Government Services Canada in our role to co-manage the
3 administration of the cost-share funding in accordance
4 with the Memorandum of Agreement.

5 The two departments also co-chair the
6 funding agreement's Project Management Committee.

7 As previously noted in the presentation by
8 Federal Public Works and Government Services Canada, we
9 have negotiated a number of sub agreements which the Tar
10 Ponds Agency must respect to meet the requirements within
11 the MOA and allow the province to draw on the federal
12 funding earmarked for the project.

13 One of the principal sub agreements
14 provides for our contract with the independent engineer,
15 who I know you've heard much about before, whose role is
16 to review the technical and engineering parameters, and
17 also confirm to the funding partners that the work
18 initiated by STPA complies with the terms of the
19 agreements such as tendering, financial reporting, and
20 environmental compliance.

21 Not only must we assure that the financial
22 investment made by the province, the provincial and
23 national levels of government, is being adequately
24 managed, we must also confirm that the work programme
25 continues to be implemented in a way which is

1 environmentally sound and protective of health on site
2 and within the adjacent communities.

3 We are also committed to an open and
4 transparent process and welcome the input of the
5 community through this EA process.

6 We firmly believe that Nova Scotia should,
7 and will, greatly benefit from this major environmental
8 remediation project, and, to that end, the province
9 introduced at one of the initial meetings of the Project
10 Management Committee a statement of economic benefits,
11 and asked STPA to prepare a comprehensive economic
12 benefit strategy similar to that as used in Nova Scotia's
13 offshore industry. This should ensure fair access to
14 contracts by local contractors.

15 The sizeable remediation project should be
16 an engine for economic renewal and increased employment
17 for CBRM and the entire Cape Breton Island.

18 We are also very pleased with the
19 relationship that we've established with First Nations
20 communities which, I believe, will be conducive to their
21 meaningful participation in the project.

22 We are particularly proud of initiating
23 what I believe is the first ever provincial set-aside
24 project in this country, that being the decommissioning
25 of the SYSCO cooling pond.

1 At this point, I feel I should take the
2 opportunity to congratulate the staff of the Sydney Tar
3 Ponds Agency for their tireless dedication in moving this
4 initiative forward.

5 Having been a part of the agency until
6 just recently, I watched first-hand the level of effort
7 to develop the detailed project description which formed
8 the basis of the EIS. I can assure you these folks,
9 along with the consultants that they have, spent long
10 days and evenings holed up in our Halifax and Sydney
11 boardrooms preparing for this environmental assessment
12 process and ensuring that the schedule was maintained.

13 I should also point out through this
14 extremely busy period, management of the important
15 preventive works project, such as the re-routing of Coke
16 Ovens Brook and the cooling pond and Battery Point
17 Barrier, continued without interruption, which is a feat,
18 watching the level of work that had to be done to get
19 ready for this, to keep the other projects on track.

20 We are also grateful to our provincial
21 partner, the Department of Environment and Labour for
22 their work in negotiating an agreement with the
23 Government of Canada for a harmonized environmental
24 assessment of the project which led to the initiation of
25 this process.

1 I must admit that originally Nova Scotia
2 had some reservations with regard to the viability and
3 the potential for further delay of the chosen EA track.
4 We reluctantly accepted the decision by the Federal
5 Minister of Environment to refer the environmental
6 assessment to a joint independent panel process, a
7 process that can be lengthy and cumbersome.

8 I do, however, recognize that our concerns
9 are being allayed as time goes on, and everyone involved
10 works extremely hard to meet this very demanding
11 schedule, demanding certainly on you, as the panel, and
12 on the Tar Ponds Agency, as well as our federal partners.

13 I'd like to thank members of the panel and
14 the agency for keeping this process on schedule. You
15 have dealt with a very tight deadline, and we look
16 forward to your recommendation.

17 Before concluding, there is a couple of
18 practical issues that were raised by the department in
19 their review of the EIS document.

20 There was a question of the status of
21 Grand Lake's potential as a water supply for CBRM. No
22 decision has been made on this issue. However, SYSCO has
23 completed an initial study on the potential for Grand
24 Lake to supply processed water to the future Harbourside
25 Industrial Park or the former SYSCO site.

1 Initial discussions a have taken place
2 with CBRM to gain their comments on the idea. You can be
3 assured that any further study of this area will include
4 contingency planning and consider all potential impacts
5 from the Tar Ponds remediation project.

6 There was a discussion on the sources of
7 capping material and transportation routes, and I must
8 point out that I would have had other people from the
9 Transportation people in that line here with me today,
10 but we discussed and thought, well, it's a little
11 premature at this point to be thinking about it until we
12 know kind of how many trucks and what the routes are. So
13 I haven't brought any of those people but certainly they
14 will be available.

15 This issue should not present a problem as
16 sources of material can be identified. It certainly
17 wasn't a problem during the previous capping of the CBRM
18 landfill which is in the top of the Coke Ovens Site,
19 where 195,000 cubic metres of topsoil and 70,000 cubic
20 metres of clay material were required.

21 As for transporting the material, once a
22 source has been identified, the appropriate
23 Transportation and Public Works staff will be involved to
24 assure that all appropriate regulations are complied
25 with.

1 Also it's worthy to note that we built --
2 just opened earlier this year, built last year, the Sparr
3 Road, which is the new highway that joins the 125, and
4 part of our reasoning to build that was knowing that
5 there would be heavy traffic, truck traffic, coming to
6 this project eventually, and we didn't want them having
7 to roam through the urban area of the municipality. So
8 that road is already in place, and will be very useful
9 for moving material around.

10 It should also be noted that the agency
11 and TPW have contributed to the work being done by the
12 Department of Natural Resources to delineate the clay
13 deposit at River Dennis, and I know most won't know what
14 that is, but there's a very interesting clay deposit that
15 they are trying to delineate and get a sense of how much
16 material is there. It sits right beside the existing
17 rail line. So that's a piece of work that's going on.

18 We are also working with DalTech, who are
19 working with the local university here on a capping
20 demonstration project which will study several capping
21 materials and their effectiveness.

22 On the issue of oversized loads, which was
23 also talked about, if heavy pieces of equipment are being
24 brought in, considering the close day-to-day working
25 relationship between the Tar Ponds Agency and

1 Transportation and Public Works, it goes without saying
2 that all necessary transportation permits will be dealt
3 with under the weights section of the Nova Scotia Motor
4 Vehicle Act. As an aside, the Director of Engineering
5 for the Tar Ponds Agency, and at least one other staff
6 person, are former Transportation and Public Works
7 employees, and are extremely knowledgeable of
8 Transportation Regulations.

9 In closing, let me reiterate that the
10 Province of Nova Scotia is firmly committed to meeting
11 the challenge of improving the quality of the Tar Ponds
12 and Coke Ovens along with adjacent SYSCO sites, and
13 having the Tar Ponds Agency implement a project which is
14 environmentally sound, economically feasible and, most
15 important of all, protective of human health.

16 As previously stated by Ken Swain of
17 Federal Public Works and Government Services Canada, we
18 have the necessary management framework in place for a
19 successful resolution of this challenge according to the
20 terms established in the Federal/Provincial Memorandum of
21 Agreement.

22 We thank the panel and others here today
23 for your interest, and if there's any questions I'd only
24 be too pleased to try and address them.

25 NOVA SCOTIA TRANSPORTATION AND PUBLIC WORKS

1 --- QUESTIONED BY THE JOINT REVIEW PANEL:

2 THE CHAIRPERSON: Thank you very much for
3 your presentation, Mr. Campbell.

4 I do want to note that we have -- other
5 departments have, indeed, brought a number of their
6 specialists and experts with them, for which we've been
7 very appreciative because that certainly aids the panel
8 questioning process.

9 We do have a number of questions, and it
10 may well be that you will simply be able to give us an
11 answer, or I'm sure you will undertake to provide those
12 answers if there's any problem.

13 I'd like to just start off, this is a
14 question that we did -- during the hearings we did put to
15 Public Works and Government Services Canada, so it should
16 be -- to balance this we'd like to put it to you, as
17 well, but we want to just simply ask you, can you confirm
18 that the provincial force in the public funding is secure
19 for the life of the project.

20 MR. CAMPBELL: Yes, it is. The province,
21 probably three years ago, booked the money, they set
22 aside the money for this project and the SYSCO project.
23 That money has been budgeted and booked for probably
24 three years now.

25 THE CHAIRPERSON: And with respect to the

1 possibility that there may be requirements for monitoring
2 and maintenance beyond the end of the 25-year period
3 identified in the MOU, can you tell me what funding is
4 anticipated to be available from the province to fulfil
5 that ongoing liability and obligation?

6 MR. CAMPBELL: Certainly. We haven't
7 budgeted that far ahead. I mean, there's 10 years of the
8 agreement and then 25 years after, so it's quite a fair
9 ways out, but, I mean, rest assured it's like any other
10 provincial land, I mean, we have property -- we have
11 industrial parks throughout the province, we hold 18 of
12 them now, some of them have contaminated areas and we
13 have no choice but to maintain and manage that property,
14 and the same will be the same here.

15 We ultimately take ownership of this
16 property. If we still retain ownership at the end of the
17 maintenance period of 25 years, then the province
18 undoubtedly will have a plan in place to deal with that
19 and put the appropriate budget to it.

20 THE CHAIRPERSON: Would you anticipate
21 that the province would retain ownership of lands while
22 there is any contamination remaining on the lands? I'm
23 referring, I guess, mainly to the Coke Ovens Sites.

24 MR. CAMPBELL: Again, and I don't want to
25 jump in and talk too, too much, because CBRM is going to

1 come and make a proposal, but we are certainly talking to
2 the municipality, as a matter of fact met with them again
3 this morning, on future site use, and some major planning
4 work that will be going ahead, and they will talk about
5 in more detail when they come, but we are certainly
6 participating fully with CBRM.

7 I really can't tell you in terms of the
8 Coke Oven Site, if, at the end of the day it's remediated
9 and there's identified sound commercial use of some kind
10 for it, no different than what we're doing with the steel
11 plant site where we're now -- if you go over there now
12 you'll see roads going in, curb and roads, and buildings.
13 You know, if it's feasible to redevelop the land and put
14 it into a better use, then certainly I would think that
15 we would be doing that.

16 THE CHAIRPERSON: You say there are -- you
17 have examples of land that is a contaminated land that
18 has been owned by the province that has been capped, or
19 in some other way contained, but not totally cleaned up
20 and then that has been sold or transferred in some way?

21 MR. CAMPBELL: Yes, certainly. I mean, we
22 have, for instance, Woodside Industrial Park, we have
23 Debert Industrial Park, of which 6 or 7,000 acres form a
24 military base. There's issues there that we deal with.

25 We have an environmental group that

1 handles that kind of thing, and, you know, we've
2 inherited shipyards. I can't think of anything much
3 worse than shipyards to inherit, but we have inherited
4 some of those around the province that we've had to go in
5 and deal with environmental issues.

6 So we have a fairly good track record in
7 dealing with those kinds of sites.

8 THE CHAIRPERSON: I guess my question is
9 specifically do you find yourself selling or transferring
10 the ownership of sites while there's still some degree of
11 contamination remaining on the sites?

12 MR. CAMPBELL: Generally, we will deal
13 with the contamination first, and then either lease or
14 sell property. But generally we will try and deal with
15 the contamination before ---

16 THE CHAIRPERSON: In the terms of the
17 proposal for the Coke Ovens Site, where the proposal is
18 to -- in some areas to do no remediation and other areas
19 to do some land farming and capping, or simply just
20 capping, but there will be contaminants remaining
21 underneath the cap, and the cap integrity will be
22 important for at least 25 years, and possibly longer, in
23 a situation like that would you anticipate actually
24 selling that land, or for future use it would be more of
25 a lease situation, as long as there are contaminants on

1 site and a cap that needs to -- for which the integrity
2 is an important part of the maintenance of that site?

3 MR. CAMPBELL: Again, it's a little far
4 ahead, but certainly, I mean, we've done that. We're
5 doing similar work on the SYSCO site where we'll put in
6 place covenants similar to the industrial park at Aerotec
7 Park in Halifax, where there's covenants put in place
8 that, when people come in to develop the land, there's
9 things they can't do.

10 If we've got a cap, we're certainly not
11 going to want people punching foundations down, or if
12 there's walls, you know, or whatever. So I would think
13 there'd be covenants put in place to protect that.

14 THE CHAIRPERSON: And the covenants at
15 Aerotec, are they in relation to contamination, or are
16 they in relationship to the proximity to the airport?
17 What are those covenants dealing with?

18 MR. CAMPBELL: Again, that's not one of
19 our provincial parks, but I know the issue is -- there's
20 arsenic issues there, and if you fly in you'll see them
21 continually treating groundwater and that, so there's
22 issues where they don't want people to break through the
23 soil, so they're required to do slab-on grades, that kind
24 of thing, but there is covenants in place to cover that.

25 THE CHAIRPERSON: One more question that I

1 have. Can you tell me in terms about the public funding
2 that the province has committed, and cost estimates that
3 have been developed, have you taken inflation into
4 account, how -- we understand that the money that we see
5 has been committed is in 2004 dollars. That's not going
6 to be worth quite as much in 10 years' time or 25 years'
7 time.

8 MR. CAMPBELL: When we did the budget, we
9 reviewed the cost, we had put in place a contingency
10 piece that was a fairly sizeable contingency that's been
11 whittled away at certainly a bit. We're still confident
12 -- even after the preliminary engineering's done, we're
13 confident that the budget that's in place is capable of
14 doing this project.

15 THE CHAIRPERSON: Thank you.

16 DR. LAPIERRE: Just one question. Madam
17 Chair took most of my questions so now I'm just relegated
18 to one small question I might ask. The question refers to
19 reporting.

20 You're going to have some truck traffic,
21 going to have some noise, and maybe some anticipated, you
22 know, traffic flow problems. Is there a mechanism in
23 place to address those? I mean, how will those be
24 addressed? Are they a local -- are they the local
25 municipality that will need to address those, or is it

1 your department, or will you work together? I'd just
2 like to understand how citizens might feel some comfort
3 how those might be addressed.

4 MR. CAMPBELL: I would assume it would be
5 a combination. I mean, the agency would be asked to put
6 a plan in place that would mitigate against, you know,
7 noise and dust and all that kind of thing. That would be
8 pretty standard. Like with any contractor doing work you
9 would require that, you know, they have standards in
10 place.

11 We, from the Department of Transportation
12 standpoint, would want to -- since we managed the
13 agreement, would want to be much involved to make sure
14 that that happened, and I'm sure the municipality and the
15 councillors, whose phones would be the first ones to
16 ring, would also want to be part of that. So I would
17 hope that the agency would put a plan in place that will
18 be acceptable to us and probably the Department of
19 Environment.

20 DR. LAPIERRE: I guess the number of
21 trucks are not that big if you look at the overall in a
22 big project, but for, you know, a city the size of
23 Sydney, which, you know, 2 or 300 additional trucks on
24 the road, it's quite different than what it would be in
25 Toronto or one of the bigger cities, the percentage

1 increase is quite great, and the capacity of individuals
2 who are, you know, being incapacitated to getting where
3 they want to go in a certain timeframe could create some
4 concerns among the citizens of the area.

5 MR. CAMPBELL: And that's exactly the
6 concern that we had when we built the Sparr Road that
7 comes off the 125, 125 being the major route around the
8 city. We built another road off the end of that that
9 comes -- coming this summer, you'll be able to drive
10 right into this area of the city. The roads will be
11 opened over on the SYSCO site, it will be linked through
12 to the Sparr Road, so hopefully all the truck traffic
13 will simply be on a major highway, a provincial highway
14 system, and come down the Sparr Road and not be coming in
15 Kings Road and some of those routes.

16 DR. LAPIERRE: Thank you very much.

17 MR. CHARLES: My colleague is worried
18 about trucks, and I'm worried about railroads.

19 I tried this morning to get some
20 information about the railroad traffic going to the
21 incinerator, and the EIS says there's going to be at
22 least one train with 38-40 cars going back, bringing
23 material to the incinerator, and possibly bringing
24 residue back.

25 The cars would be pretty heavy, and I'm

1 just wondering what role your department has in ensuring
2 that the rail bed would be adequate for the task. As you
3 know, we've heard about problems in BC where trains have
4 dumped their carloads into the lake, and it's a private
5 railroad, I understand that, but your department has some
6 responsibility, I take it, for ensuring that the rail bed
7 is adequate to the task.

8 MR. CAMPBELL: In this case, it would be
9 mainly Transport Canada, and they have, I think, a Safety
10 Management Plan that they have to put in place.

11 Certainly we have a section of our
12 department that deals with the rail. I'm pretty sure it
13 would be their jurisdiction, but we would certainly be
14 much involved. If it was a project the province was
15 involved in, we would want to make sure the Management
16 Plan was in place that made sure that there was no issues
17 of accidents and that kind of thing, as best you can on a
18 rail line.

19 MR. CHARLES: I guess if this project
20 doesn't illustrate anything else, it illustrates the
21 complexity of the federal jurisdiction, doesn't it.
22 That's a comment, you don't have to answer that.

23 I was also concerned, I think there was
24 some mention in the EIS about the possibility of maybe
25 having to put in some extra intersection lights at the

1 intersection. I don't know whether it's the highway in
2 Grand Lake Road or not.

3 Are you aware of this possibility, and if
4 so, who would pay for that, would it be the province or
5 somebody else?

6 MR. CAMPBELL: Again, it would depend if
7 it was a provincial highway, a provincial designated road
8 then, yeah, the province would do it.

9 We've done an extensive work on the
10 intersection out now where the Sparr Road meets Grand
11 Lake Road, but certainly our department would be
12 involved. If that kind of issue came up, we would
13 certainly work with -- if it's a municipal issue, then we
14 would work with the municipality, if it's a provincial
15 highway then, yes, we would have to deal with it.

16 MR. CHARLES: And finally, my colleague
17 was concerned about citizens and how they might be taken
18 care of with regard to any complaints about truck
19 traffic.

20 I guess my concern is due to the increased
21 levels of truck traffic and the need to weigh loads, and
22 all that sort of stuff, is your department going to be
23 able to accommodate this increased amount of work in
24 terms of inspectors and weigh stations, and what-have-
25 you?

1 MR. CAMPBELL: I wouldn't see it as a
2 great problem, but I would have to talk to the people
3 that are in that business.

4 I mean, we have weigh scales already over
5 on the SYSCO site for the trucks that are moving over
6 there continually with scrap, so those kinds of
7 facilities exist. We have, you know, truck washing
8 facilities already in place. So a lot of the
9 infrastructure's there.

10 MR. CHARLES: So you may or may not have
11 to add any new facilities or personnel.

12 MR. CAMPBELL: It would certainly be
13 something -- once we know the amount of trucks that are
14 going to be moving, the size and that kind of thing,
15 certainly something we would have to look at.

16 MR. CHARLES: And so as far as my railroad
17 is concerned, I have to go back to Transport Canada, do
18 I, for my answer?

19 MR. CAMPBELL: I'm pretty sure that they
20 are the ones that would be -- the ones you'd need to talk
21 to, but I can certainly -- be glad to come back with more
22 information on that.

23 MR. CHARLES: Well, if you have any
24 information at all, I'd certainly be appreciative of
25 anything you can supply me with. Thank you very much.

1 MR. CAMPBELL: I'll be glad to do that.

2 THE CHAIRPERSON: I think we'll enter that
3 into the record as a formal undertaking that you're going
4 to provide the panel with information about your
5 department's role with respect to regulation and
6 management of issues relating to the railroads.[u]

7 I do have one more question. Could you
8 explain to me what your department's -- if any, I think
9 you have one -- involvement and role is with respect to
10 the development of new borrow pits aggregate sources,
11 because this project does require a lot of those kinds of
12 materials or, to my uninitiated eye, it looks -- when I
13 look at the table, it looks like a lot of material that's
14 got to be found from somewhere and brought in.

15 And we know from the EIS that the source
16 of those materials has not been identified. Is it --
17 first of all, can you tell me what your department's
18 relationship is, your role with that whole issue, and
19 whether you have some opinions and wisdoms to share with
20 us about the implications of the amount of materials that
21 are required and the movements of those materials, and
22 the impacts of possibly opening up new borrow pits or
23 whatever.

24 MR. CAMPBELL: Okay. Well, I'll answer
25 your question the best I can.

1 It's certainly not my expertise but in
2 terms of actually development of the burrow pit, I
3 wouldn't see that we would have an involvement other than
4 what's the impact on our highway system, in terms of
5 trucks coming out and -- but we would certainly have an
6 involvement there.

7 I think it would be more a Department of
8 Environment issue, Provincial Department of Environment
9 issue in terms of licensing and those areas. But again,
10 I -- as I say it's not my expertise but we'd only again
11 be glad to come back to you on that.

12 THE CHAIRPERSON: I'm just -- is there not
13 something to do with the fact that if aggregate sources
14 supply Provincial Highways with materials, there's some
15 different level of regulation involved. Is that not the
16 case? I may be totally off base here but I'm ---

17 MR. CAMPBELL: And again, I have to say
18 it's not my expertise but we'd certainly be glad to
19 undertake to come back.

20 THE CHAIRPERSON: Well, I think we will
21 enter that as a separate undertaking that you'll provide
22 me with some more information about the department's role
23 with respect to the management and regulation of burrow
24 pits and aggregate sources. [u] And if I am completely
25 off base and the answer is we have no role, then I

1 apologize. But it won't take you long to give me my
2 answer.

3 MR. CHARLES: Madam Chair, I found one
4 other question, if I may. We discussed at some length
5 the role of the independent engineer and it seems to be a
6 pretty important position because I think it's budgeted
7 for twelve million dollars (\$12,000,000) over the length
8 of the project. Could you give me your understanding of
9 the role of the independent engineer and what he will or
10 she will do in relation to this project?

11 MR. CAMPBELL: I guess the way that it's
12 easier for me to understand is I see them as a technical
13 auditor on the project. Their role is not to design.
14 Their -- simply their role is to review all of the
15 engineering material that comes forward and also the
16 financial information, is it adequate, is the financial
17 information like the cost to complete is a big part of
18 their role.

19 They will review the cost to complete and
20 be able to tell the Federal and Provincial Government
21 where they are at any one point in terms of the budget
22 for this element of the project might be forty thousand
23 dollars (\$40,000). Are they at thirty-eight thousand and
24 climbing with only 70 percent of the work done. So in
25 terms of they have a role as that kind of overseer of

1 making sure that we're on track financially but also if
2 there's issues, technical issues around some of the
3 engineering and they see a concern with it, they will
4 express the concern.

5 It's not their role to redesign. It's
6 simply to point out that there is -- in their opinion,
7 there's a concern here that we should look at and the
8 agency would then have to go back to their engineers and
9 say look, this is a point that's been raised by the
10 independent engineer. We should review that. So it's a
11 bit of a peer reviewing role but more of a technical
12 auditor of the project.

13 MR. CHARLES: Thank you very much.

14 THE CHAIRPERSON: I will now open the
15 floor to questions from other participants. Turn to the
16 Proponent. Do you have any -- Sydney Tar Ponds Agency,
17 do you have any questions or any points of clarification?

18 MR. POTTER: No questions. Thank you.

19 THE CHAIRPERSON: Could I just -- from the
20 registered presenters, could I just have an indication of
21 how many people have questions. Ms. Ouellette? Oh, my
22 goodness. All right. So I see about seven or eight
23 hands. Just to see you all, I think -- so, if again as I
24 -- if I do something like I did this morning, when I
25 forgot to call Mr. Brophy, let me know immediately and I

1 will rectify that. But -- I'm going to ask you to ask
2 one question and a follow up question. We'll see where
3 that gets us. Mr. Brophy, I didn't see you last time so
4 why don't you get right in there first time.

5 --- QUESTIONED BY MR. ERIC BROPHY

6 MR. BROPHY: Thank you very much, Madam
7 Chair. And I am not that small to be overlooked.
8 However, having said that, welcome Mr. Campbell. You say
9 you've been at this for 16 years. That's I guess, six
10 more than I have. But if my memory -- and I don't think
11 it's that bad -- if my memory serves me correct, ten
12 years ago there was a plan to use incineration for the
13 PCB and then encapsulate the rest. That plan was flatly
14 rejected by this community. That rejection led to the
15 formation of the Joint Action Group working supposedly in
16 partnership with our government partners. Is that not
17 correct?

18 MR. CAMPBELL: Yes, as I remember it.
19 Yeah.

20 MR. BROPHY: That's it. Thanks. I just
21 wanted that on the record that this community did reject
22 incineration and encapsulation previously.

23 THE CHAIRPERSON: Thank you Mr. Brophy.
24 Ms. Ouellette.

25 --- QUESTIONED BY MS. DEBBIE OUELLETTE

1 MS. OUELLETTE: Hi, my name is Debbie
2 Ouellette. You mentioned that there was 1,754 workbooks
3 filled out by residents in the community. Can you tell
4 me what option they preferred?

5 MR. CAMPBELL: Well, I mean, I'd have to
6 go back and look at the details but there was six options
7 for the Tar Ponds in four.

8 MS. OUELLETTE: Yeah.

9 MR. CAMPBELL: And if you look at the --
10 and I have it here -- the table, the option -- Coke Ovens
11 was Option 3, seemed to be somewhat preferred and Option
12 3 and 4. And Option 3 and 4 for the Tar Ponds. Now, I
13 don't have the actual book in front of me, the -- to go
14 back and read the details of what those options were.
15 Can you provide the information on Option 3 to the panel?
16 Was incinerator mentioned in Option 3?

17 MR. CAMPBELL: I don't have that in front
18 of me. I just have the summary and the summary of the
19 costs.

20 THE CHAIRPERSON: I gather you know what
21 they present so rather than make Mr. Campbell try and
22 find it why don't you tell just tell us that ---

23 MS. OUELLETTE: I don't know the complete
24 details as I don't have it in front of me but Option --
25 incineration was the least preferred. And just to -- I

1 just wanted to know this too, and I don't know if you
2 would know this, will they be using slag in any of the
3 project remediation project? Will they be using slag in
4 the -- in any part of the remediation project?

5 THE CHAIRPERSON: So slag originating from
6 where?

7 MS. OUELLETTE: I think they mentioned it
8 somewhere in the ESI [sic] it might be used in some
9 portions of the Tar Ponds. And I just want to clarify
10 that.

11 THE CHAIRPERSON: My memory was that there
12 was some mention that it was used in the solidification.
13 Some small amount was used in solidification trials. I
14 don't -- let me ask -- rather than have me guessing,
15 let's have the Proponent just say, is there some use of
16 the slag in the ---

17 MS. OUELLETTE: Yeah.

18 MR. POTTER: Yes, there were -- there was
19 slag used in some of the solidification trials. We fully
20 expect that the ultimate solidification mix will have
21 some slag involved with it. It's extremely likely that
22 the contractors during the construction period will use
23 slag as has been mentioned previously in one of the
24 earlier days. This -- the slag from Sydney Steel is a
25 very highly used commercial product that probably half

1 the roads in Sydney and 75 percent of the driveways in
2 Sydney are now constructed with that material.

3 MS. OUELLETTE: Thank you.

4 THE CHAIRPERSON: Thank you Ms. Ouellette.
5 Yes, Mr. Marmon.

6 --- QUESTIONED BY GRAND LAKE ROAD RESIDENTS (RON MARMON)

7 MR. MARMON: Thank you, Madam Chair. In
8 this presentation Grand Lake was spoken of as a possible
9 source of processed water for SYSCO. And I believe in
10 the last CBRM council meeting there was some, not really
11 discussion, but a suggestion that if this were to come to
12 pass that the CBRM would have some interest in maybe
13 setting up a water treatment facility to supply to
14 Whitney Pier area or other areas and thus alleviate some
15 of the problems they're having with their well field site
16 right now. But my question is, why would you allow an
17 incinerator to be set up next to a lake that has a
18 valuable potential as a future water supply whether or
19 whether or not this comes to pass in the next few years
20 or whatever?

21 MR. CAMPBELL: Do you want me to ---

22 THE CHAIRPERSON: Yes, please, respond if
23 you think it's within your mandate or your department's
24 mandate to comment.

25 MR. CAMPBELL: I'll answer as best I can.

1 I mean, we heard discussion about the previous
2 incinerator and the failed attempt. The previous
3 incinerator did not fail. It passed it's tests and
4 overperformed what it was supposed to. Any incinerator
5 that's well run, there should be no emissions.

6 If there's almost no emissions, I mean, if
7 you're getting six nines destruction there should then
8 not be an impact. But -- so I mean the simple answer to
9 me is, if you're going to have an incinerator then you
10 bloody well better make sure that there's nothing --
11 there's no impact on the environment surrounding that
12 incinerator.

13 MR. MARMON: I understand that but I mean
14 everybody's that familiar with incinerators knows that
15 you're going to have problems. I mean, that's just a
16 fact of life. I mean, you're car has problems. And it's
17 a piece of machinery like an incinerator. So I think a
18 reasonable precaution would be not to set it up in an
19 area where if you had a problem, it would cause you a
20 source of problems, especially with a water supply. I
21 mean, to me that's a valuable resource.

22 THE CHAIRPERSON: Do you have a second
23 question?

24 MR. MARMON: Yeah, I do have a follow up
25 question. You talk about companies being reluctant to

1 set up in the area because of all the publicity about the
2 Tar Ponds. Do you think the operation of an incinerator
3 in this area would not cause some reluctance of companies
4 to come to this area?

5 MR. CAMPBELL: You're asking a fairly
6 tough question. Generally, people perceive incinerators
7 as being you know, they see them as not the new
8 technology. The older technology, mass burn
9 incinerators. So yeah, I'm sure that anybody that's
10 heard the hype around incineration would probably have
11 some concerns about you know, locating in a community
12 that has one. But you know, that's -- you're outside my
13 expertise.

14 MR. MARMON: I understand that and really
15 I have a problem with, when you're asking questions of
16 one area of government because I find it very confusing
17 to understand who's responsible for what and when you
18 just finally think that you have it right, they change
19 it. So -- but anyway, I think the idea of this project
20 is not to hamper any kind of development. And it's
21 certainly not to make a community unacceptable whether
22 that be a true fact that there is going to be problems or
23 not going to be problems. The whole thing with this Tar
24 Ponds is that there's a perceived problem and I mean,
25 we're told you know -- so I mean, I think at the very

1 least, anybody involved in it should say well, we're not
2 going to do anything else to make things worse. So
3 anyway, thank you very much.

4 THE CHAIRPERSON: Thank you, Mr. Marmon.
5 Mr. Lelandais.

6 --- QUESTIONED BY MR. HENRY LELANDAIS

7 MR. LELANDAIS: Yes, thank you, Madam
8 Chair. I just have one question to the presenter. With
9 regards to the railroad transporting any material from
10 the Tar Ponds to the incinerator, should the incinerator
11 be approved, I gather from previous discussion that your
12 department will not be involved in the railroad phase of
13 it but that would come under Federal jurisdiction. If
14 that's correct, would the assessment of the integrity of
15 the present railroad that has been idle for quite a few
16 years now come under your jurisdiction prior to the use
17 of the railroad for transportation and before the Federal
18 department took over its responsibility for that
19 railroad? In other words would you have anything to do
20 with the condition of the present railroad prior to
21 transportation or would your department be involved?

22 MR. CAMPBELL: Well, it's a privately run,
23 privately owned railroad but certainly there is
24 regulators that, you know, would regulate you know, as
25 they do with any railway, whether it's government owned,

1 private owned or whatever, they would regulate the rail
2 line and the condition of the bed and that kind of thing.
3 The information that I had is that we would not -- it
4 wouldn't be our role to regulate that particular railway
5 line.

6 MR. LELANDAIS: So you say it would be
7 your role or it would not?

8 MR. CAMPBELL: No, it would not be.

9 MR. LELANDAIS: It would not be. I see.
10 The reason I ask, Madam Chair, is because I'm concerned
11 about rail integrity. I spent my life in rails, making
12 them and inspecting them and so on and I know that that
13 railroad is in bad shape so I'm anxious to find out who
14 would be responsible for it. Thank you very much.

15 THE CHAIRPERSON: Well, thank you. And
16 Mr. Campbell has undertaken an undertaking to come back
17 with some information to clarify this issue of
18 jurisdiction around the railroad so -- Ms. Kane, did I
19 see your hand? No. Well, don't take too long to put it
20 up, but Sierra Club.

21 --- QUESTIONED BY SIERRA CLUB OF CANADA (MR. BRUNO
22 MARCOCCHIO)

23 MR. MARCOCCHIO: Thank you, Madam Chair.
24 To begin with, Mr. Campbell and I go back on this file
25 probably longer than any other two people in this room.

1 Back at least almost 15 years now. And I think it's fair
2 to say that despite the sometimes contentious nature of
3 the debate our interactions, at least from my point of
4 view, have always been informative and respectful and I
5 want to let you know that I hope that that continues
6 through the next phase of this long odyssey. I want to
7 do two things to begin with.

8 One is to read from STP, a brief quote
9 from the conclusions of STP 024, Sydney Tar Ponds
10 cleanup, shoreline investigation report 2 which is the
11 undertaking that Sierra Club committed to present to the
12 panel today. And at the conclusion of my question I will
13 make it available. It says at the "Summary and
14 Conclusions" on page 21:

15 "A follow up investigation of the
16 shorelines along the Tar Ponds
17 resulted in a more accurate
18 definition of the pre-Tar Ponds
19 shoreline along the southeast side
20 of the upper Tar Ponds. This
21 investigation almost -- also
22 confirmed contaminated sediments lay
23 under the fill material bordering
24 the northeastern and southwest
25 shorelines of the north Tar Ponds

1 and that they also extend from the
2 Wash Brook up to the west side of
3 the mall building of the Sydney
4 Shopping Centre. The contaminated
5 sediment is as contaminated as the
6 adjacent Tar Pond materials along
7 the northeast and southeast
8 shorelines of the north and south
9 Tar Ponds respectively."

10 Mr. Campbell -- or to the Chair, this
11 clean up is unique. In this case the polluters are the
12 remediators and the regulators. This inherent conflict
13 of interest makes it essential that the plan be
14 completely detailed and transparent and that all
15 stakeholders be fully engaged to avoid repeating past
16 errors. Stakeholder involvement was limited during the
17 first two clean ups by design. It led to lack of
18 informed public input and ultimately to the failure of
19 those projects. This clean up requires not faith but
20 sober, informed deliberation by a fully informed panel.
21 Mr. Campbell, how can a plan that mirrors the two failed
22 attempts, incineration in '92 or so and solidification in
23 1996 and that draws an illogical boundary that ignores
24 the continuous contamination on the southeastern side of
25 the north Tar Pond, the communities of Whitney Pier,

1 Ashby, the northend of Sydney and the Wash Brook up to
2 the west side of the Sydney Shopping Centre be
3 considered complete, defensible or cost effective?

4 MR. CAMPBELL: Did I get two questions
5 there, one about the contamination off site and ---

6 THE CHAIRPERSON: I didn't hear a question
7 relating to that statement. Why don't we separate these
8 out. So let's take that. You read something out with
9 respect to the extent of contamination underneath the --
10 beyond the boundaries of the current site of the Tar Pond
11 so can you -- because you have two questions there, can
12 you formulate a question that belongs in the direction of
13 Mr. Campbell that -- with respect to that? What would
14 you like to know from Mr. Campbell with respect to
15 document you quoted from?

16 MR. MARCOCCHIO: Well, it's with respect
17 to the artificial boundaries that have been drawn. The
18 Proponent has claimed that there is an agreement, an
19 agreement that is not yet on the public record that I
20 would like to challenge. We've established that
21 contamination does move out there and I'm rather
22 concerned and alarmed that the Proponent is not being
23 required to produce the evidence that there is a formal
24 agreement that draws a hard line. This document on the
25 public record, done in 1990 by Acres International

1 clearly shows that the contamination is continuous. With
2 -- and let's narrowly focus for a moment just on
3 underneath that slag pile.

4 THE CHAIRPERSON: So your question relates
5 to project boundaries?

6 MR. MARCOCCHIO: To project boundaries and
7 the full need if there is any hope that there is going to
8 be any stop to the migration of pollutants that this
9 report dated 1990 that clearly outlines that it's
10 continuous, underneath the slag pile and up the Wash
11 Brook to the Sydney Shopping Centre must be included if
12 we're going to stand any chance of having a community
13 that is no longer ---

14 THE CHAIRPERSON: I need to separate out
15 these things. This is a questioning stage of the
16 proceedings where we're trying to draw out information
17 that the panel needs. There's an argument stage of the
18 proceedings in which you will be placing through your
19 presentations, you'll be placing some of these items
20 before us. With respect to the expansion of the project
21 boundaries, I don't think that falls -- I will take --
22 confer with my colleagues. My understanding it doesn't
23 fall within our mandate.

24 However, so that the connection for our
25 purposes that needs to be made is with respect to the

1 effects of this project. So if there's some kind of
2 cumulative effect that you can see but I'd really like --
3 as I said -- repeat that these are the things mostly that
4 I think you should bring forward to us in your
5 presentation but do you have -- your question for Mr.
6 Campbell with respect to the project boundaries is what?

7 MR. MARCOCCHIO: Do you agree with this
8 1990 report that makes it clear that the contamination is
9 continuous under the slag pile and up the Wash Brook to
10 the Sydney Shopping Centre?

11 MR. CAMPBELL: And I'm familiar with the
12 Acres Shoreline Study that you're quoting from. Yes, it
13 was a fairly extensive study. It looked underneath the
14 ballfields. It looked -- I mean, where the Acadian Bus
15 Line is, the car dealer now, went across the street to
16 the parking lots over there. And no surprise, I mean,
17 you have all the railway bed on the other side. There's
18 contaminants. I mean, it's an industrial area.

19 Can you link it to contaminants that
20 result from the Tar Ponds? Where the Acadian Bus Lines
21 are was an old garbage dump at one time, many years ago.
22 We -- when we were doing our program, we ran into
23 problems there. We worked our way right back and I think
24 we even went inside the building of the Acadian Bus
25 Lines. I mean you have to draw a line somewhere. I

1 mean, do we start taking down shopping centres. Do we
2 take out the whole rail yard on the other side.

3 We drew a line that said here's where the
4 biggest problem was and this is a hunk that we can bite
5 off and deal with. I mean, we could be -- Wash Brook, I
6 don't know how far up Wash Brook the contaminants go and
7 whether they relate to the Tar Ponds. Wash Brook flows
8 into the Tar Ponds. There's tidal action. I mean,
9 you're talking about an enormous project that simply
10 couldn't be done if you were going to go chasing
11 contaminants all over the place.

12 THE CHAIRPERSON: I do need to bring this
13 back for the panel's purpose to the panel's mandate. We
14 have to stay within our mandate which is to assess the
15 facts of the project that's ---

16 MR. MARCOCCIO: And the impacts of ---

17 THE CHAIRPERSON: -- excuse me -- with the
18 effects of the project or the boundaries that have been
19 defined by the Proponent you may have arguments that you
20 wish to make with respect to increasing the boundaries
21 but I'm afraid they don't fall within our mandate.
22 However, if you've got some concerns with respect to
23 contamination outside the boundary that you can link when
24 you make your presentation to the overall impacts of the
25 proposed projects, by all means, please bring that

1 forward to us. Do you have one more question for Mr.
2 Campbell.

3 MR. MARCOCCHIO: Yes, I do. I have
4 another question for Mr. Campbell and I would like some
5 direction from the panel about when the referred to
6 boundary at the slag pile will be made available to the
7 public so that we can review it?

8 THE CHAIRPERSON: Sorry, what's that
9 question to us? When will the -- you have a question to
10 ---

11 MR. MARCOCCHIO: The agreement that the
12 Proponent has repeatedly alluded to that draws a line at
13 the slag pile is not on the public record. So the
14 boundaries of the -- are a contentious issue that is not
15 established at this point. So that's an issue that ---

16 THE CHAIRPERSON: If you have a -- yes,
17 would you please place your question to Mr. Campbell. I
18 will then speak to the agency and we'll see where we can
19 go from here and then I will move to the next questioner.

20 MR. MARCOCCHIO: Mr. Campbell in light of
21 the fact that the second stated objective of this
22 remediation is to improve the perception and property
23 values. The socio-economic impacts in the property
24 values of the adjacent communities. Given the admission
25 that you have just made of the massive contamination and

1 let's ignore why, after that 1990 figure that the Acadian
2 Lines was built, an additional shopping mall was built
3 and all of those have been built since the extent of the
4 continuous contamination is known, what do you think? Do
5 you think that that second objective will ever be
6 accomplished with this partial remediation that ignores
7 the massive contamination that you and I have discussed
8 and have been working to address for the last nearly 20
9 years.

10 MR. CAMPBELL: I'm still not quite sure,
11 what's the actual question you're asking?

12 MR. MARCOCCHIO: The question is that one
13 of the goals of this remediation project is to enhance
14 the economic and property values of Sydney by virtue of
15 the fact that this will be a remediated community. The
16 point I'm making is that it's clear that it will not be a
17 remediated community, that the homes are contaminated,
18 the malls are contaminated and the bus depot is
19 contaminated, the brooks are contaminated, what do you
20 think the likelihood of success of that second objective
21 will be, given that we are again ignoring all of that?

22 MR. CAMPBELL: I think the property values
23 will be enormously enhanced when we have dealt with the
24 Tar Ponds and the Coke Oven site and you're saying you
25 don't understand where that came from. Well, that is a

1 public document in the MOA. It's in the interim cost
2 share agreement. Look at the back. There's maps that
3 define those routes that -- they're there. It's not --
4 those are public documents. And ---

5 THE CHAIRPERSON: Thank you, Mr.
6 Marcocchio. I'm going to turn, I'm going to give an
7 opportunity to the agency if you want to give us any
8 clarification and then I am going to go to the next
9 questioner.

10 MR. POTTER: As Mr. Campbell indicates, I
11 don't think we're doing a very good job of hiding the MOA
12 if that's the suggestion. We've been quoting it. It's
13 really available to anybody who wants it. And I'll refer
14 people to Section 1.1 which describes the project and
15 it's quite clear in there the boundaries of the project.
16 We've provided a follow up map which came from Volume I
17 of the EIS, figure 1.3-1, I think the information's
18 there. If you wish I can read the clause from the
19 agreement but it's ---

20 THE CHAIRPERSON: No, thank you.

21 MR. POTTER: You're welcome. Great.
22 Thank you.

23 THE CHAIRPERSON: Ms. MacLellan you had a
24 question. Mr. Ignasiak you had a question. Is there
25 anybody else who put their hand up? Oh, Ms. Kane has a

1 question. Is there anybody who's not a registered
2 participant so that I know how many more I've got? No,
3 then -- yes Mr. Ells. Just a second please. Okay, so if
4 I can ask for questions to be fairly crisp please and
5 then we can -- your reward is a break and then we will
6 bring our next presenter on.

7 --- QUESTIONED BY CAPE BRETON SAVE OUR HEALTH CARE

8 MS. MACLELLAN: I was just going to say
9 that I'll try and be as quick as I can and as short as I
10 can because I -- from looking around I see a lot of tired
11 people. But before when you spoke about the
12 transportation on the trains, am I given to say that the
13 responsibility for looking after the hazardous waste on
14 that does not lie with you, it lies with the Federal
15 jurisdiction.

16 THE CHAIRPERSON: Well, we've been asked
17 -- this question has come forward a couple of times. We
18 have asked for -- Mr. Campbell's given his opinion. We
19 asked him to take an undertaking to come back with more
20 detailed information. But ---

21 MS. MACLELLAN: But correct me if I'm
22 wrong, he is responsible for the hazardous waste on the
23 highways and roads?

24 THE CHAIRPERSON: Mr. Campbell what are
25 your departmental responsibilities with respect to

1 transportation of dangerous goods?

2 MR. CAMPBELL: Again it's a Federal
3 program but I assume that the Province would have some
4 involvement if it's on a Provincial highway system.

5 MS. MACLELLAN: So if somebody was
6 polluting the roads, if there was accidents, it would be
7 your responsibility, right? Okay, now from -- the second
8 part of this question is, Tar Ponds Agency falls under
9 your department, right? And you administer that
10 department? Or is it ---

11 MR. CAMPBELL: I administer jointly with
12 the Federal Public Works, the agreement, the funding
13 agreement.

14 MS. MACLELLAN: But for the actual budget
15 approval and all that stuff, does that come through Nova
16 Scotia Department of Transportation and Public Works?

17 MR. CAMPBELL: It comes through the
18 project management committee of both Federal Public Works
19 and the Provincial and they approve and the province is
20 the banker, the Province pays the bills and claims the
21 percentage back from the Federal Government.

22 MS. MACLELLAN: And you are responsible
23 for monitoring and dealing with hazardous waste on roads,
24 definitely and you're not sure of the trains? Correct?

25 MR. CAMPBELL: Again, I'll need to clarify

1 that as part of my undertaking of what our responsibility
2 is for dangerous goods on the highway system.

3 MS. MACLELLAN: Well, you ---

4 THE CHAIRPERSON: Now, you're building up
5 to a question. I always like people to get to their
6 questions. Often it's helpful to state it right up
7 front.

8 MS. MACLELLAN: Okay. I've had some legal
9 consultation on the conflict of interest clause. And
10 according to my legal minds, if someone is perceived to
11 be in a conflict by the public and there is a potential
12 for conflict and the public perceive it to be so, then it
13 is so, so therefore I'm saying Department of
14 Transportation in monitoring your hazardous waste and how
15 it's delivered and where it's delivered is in conflict
16 when they're also administering Tar Ponds Agency.

17 THE CHAIRPERSON: Well, I'm going to put a
18 question mark on the end of that because this is a
19 question period. Mr. Campbell, do you feel that -- what
20 is your response to the suggestion that there's a
21 significant conflict of interest between two roles, one
22 of which you have not defined?

23 MR. CAMPBELL: Off the top of my head, I
24 don't see a conflict of interest. I mean, we deal with
25 other sites and you know, around the province and there

1 is no conflict. There was a perceived conflict of
2 interest when I was in the Tar Ponds Agency. That's why
3 I moved out of the agency so that there wouldn't be a
4 conflict of interest of my managing the agreement and
5 being within the agency.

6 MS. MACLELLAN: I would just ask the
7 panel, then to bear in mind when they do get the results
8 of who monitors the hazardous waste transportation, if it
9 is Department of Transportation, and they are
10 administering Tar Ponds Agency, that the public perceive
11 it to be a conflict and therefore it is so.

12 THE CHAIRPERSON: Thank you.

13 MR. POTTER: Madam Chair, could I add to
14 that ---

15 THE CHAIRPERSON: Yes.

16 MR. POTTER: --- just for clarification
17 purposes.

18 As part of the MOA there was a requirement
19 for the Province to establish a special operating agency,
20 the Sydney Tar Ponds Agency, which is a separate agency,
21 not part of Transportation and Public Works.

22 I report as the CEO directly to the
23 Minister of Transportation and Public Works who is
24 responsible for the Sydney Tar Ponds Agency. We are not
25 part of the administration of Transportation and Public

1 Works. And the MOA did address that on purpose for that
2 very reason, I believe.

3 THE CHAIRPERSON: Thank you, Mr. Potter.
4 So, I have three more people and then we will take a
5 break. Mr. Ignasiak, do you have a question?

6 --- QUESTIONED BY MR. LES IGNASIAK

7 MR. IGNASIAK: Thank you, Madam Chair. I
8 have one or two questions. Two, I believe, right?

9 THE CHAIRPERSON: Sorry, what did you ask?

10 MR. IGNASIAK: How many questions do I
11 have?

12 THE CHAIRPERSON: Two.

13 MR. IGNASIAK: Just two.

14 THE CHAIRPERSON: Two succinct questions.

15 MR. IGNASIAK: So, I will have to scrap
16 six. Okay. I will try to stay within those two
17 question.

18 Madam Chair, I have in front of me a
19 letter which was sent to Mr. Gary Campbell on March 25th,
20 2004 regarding a conflict of interest. The company that
21 sent this letter has never received an answer and the
22 letter is part of the submission that was made by those
23 companies.

24 I wonder whether Mr. Campbell has any
25 recollection of this conflict of interest that we were

1 trying to brief him on.

2 MR. CAMPBELL: I know there was a number
3 of letters went back and forth. I certainly don't recall
4 discussion on conflict of interest and I'm not sure what
5 the basis of that would be but ---

6 MR. IGNASIAK: Thank you very much.
7 That's a long time, that's two years ago almost, actually
8 over two years.

9 The second question that I am entitled to
10 ask is, Mr. Campbell at a certain point said that the
11 Federal and Provincial Governments developed the project.
12 By developing the project I have in mind mainly two
13 components. First is financing; second, if this is a
14 remedial project, is selection of the remedial
15 technologies.

16 It is true that the Federal Government
17 really contributed to the project, but as far as
18 contribution of Federal Government to selection of
19 technologies is concerned there is essentially zero
20 contribution, which is confirmed again by a letter that I
21 have in front of me from the person who actually, on
22 behalf on the Federal Government, developed the agreement
23 which was signed on May 12th, 2004. So, this letter is
24 also enclosed as a submission.

25 THE CHAIRPERSON: Yes. Mr. Ignasiak, the

1 line of questioning is very difficult for the Panel to
2 follow, both me as Panel Chair to make some kind of
3 determination whether we're within the topics within our
4 mandate, because I don't know what you're looking at, I
5 don't know what you're asking.

6 MR. IGNASIAK: I have a specific question
7 now as a result of ---

8 THE CHAIRPERSON: A specific question
9 would be great.

10 MR. IGNASIAK: --- of this introduction.
11 Based on how the project is defined today by the
12 Provincial Government and not the public and not Federal
13 Government, I wonder can Mr. Campbell provide any
14 substantiation for naming this project environmentally
15 sound, economically feasible and protective of human
16 health.

17 THE CHAIRPERSON: Mr. Campbell, since this
18 question is directed to the Panel Chair, I -- well, I'll
19 give you an opportunity to respond. I'm not sure how
20 valuable the Panel will find it with that level of
21 generality to the question, but if you have a -- wish to
22 make a response.

23 MR. CAMPBELL: One brief comment. I just
24 don't understand where the information would come from
25 that the Province put the project together.

1 I mean, Environment Canada was here
2 yesterday and talked about their participation. Our
3 counterparts at federal Public Works, although not
4 directly involved at the time, had some input. I mean,
5 clearly this was a federal/provincial initiative in
6 putting this plan together.

7 MR. IGNASIAK: Thank you very much.

8 THE CHAIRPERSON: Thank you, Mr. Ignasiak.
9 I'm going to take two more questions, Ms. Kane and then
10 Mr. Ells, and then we will take a break.

11 --- QUESTIONED BY MS. MARLENE KANE

12 MS. KANE: Thank you, Madam Chair. I'm
13 sorry I wasn't ready at the time, because I just came
14 running in from work. Hi, Gary.

15 In the 1980s a hazardous waste incinerator
16 was built close to the Tar Ponds to burn PAH-contaminated
17 sediments from the Tar Ponds. It was not designed to
18 burn PCBs and never did burn any PCBs, as bogus, non-PCB
19 sludge was used for the very short commissioning period.
20 So, to say it performed well during compliance testing is
21 not really relevant to the Tar Ponds sludge, as it
22 contains PCBs.

23 Transportation and Public Works did
24 maintain throughout the JAG process that this incinerator
25 could be upgraded to burn PCBs. Even though it is only

1 600 metres from Harbourside Elementary School and the
2 Whitney Pier community, it was put forward as an option
3 to incinerate all of the Tar Ponds in the JAG process.
4 I'm almost at my question.

5 A decision was made to scrap the
6 incinerator several years ago and it was stated then that
7 it would never be used in future remediation attempts.
8 Unfortunately, that incinerator has not been scrapped, to
9 the best of my knowledge, and remains as one of the few
10 structures on the SYSCO site.

11 Is it still the position of Public Works
12 and Transportation that the Tar Ponds incinerator will
13 never be used, and are there still plans to scrap it?

14 MR. CAMPBELL: It is still the intention
15 it will never be used. It is -- there's been a couple of
16 offers of interest and that's the only reason it's
17 sitting there, because other people have wanted to look
18 at the potential to purchase it.

19 But I will straighten out one point. You
20 say the incinerator never burnt anything but bogus
21 sludge. It burnt bogus sludge only during its run-up
22 test. It certainly burnt -- it burnt over 4,000 to 5,000
23 tonnes of real sludge during the early '92/'93 and under
24 all the proper conditions and was hitting six nines
25 destruction rate.

1 MS. KANE: Including PCBs?

2 MR. CAMPBELL: No, no, it was not licensed
3 for PCB. When we built the incinerator we hadn't found
4 the PCB out in the North Pond at that point.

5 MS. KANE: Right. That's why I'm saying
6 it's not really relevant to say that it would -- it
7 performed well, because it doesn't relate to the site as
8 it is now. I realize that the incinerator was built
9 prior to your discovery of PCBs in the pond. Thank you.

10 THE CHAIRPERSON: Thank you very much, Ms.
11 Kane. The expression you were using was "bogus sludge"?
12 Was that it, "bogus sludge"? I hadn't heard of bogus
13 sludge. Made-up sludge. Is that right? Well, you learn
14 something. Mr. Ells?

15 --- QUESTIONED BY MR. CAMERON ELLS

16 MR. ELLS: The long-term future of this
17 project and this property involves different potential
18 property uses being considered, and those decisions
19 haven't been made yet, and yet when those happen there'll
20 be properties or portions of properties that are
21 considered to be managed sites under the Contaminated
22 Site Guidelines or equivalents.

23 In Halifax the Municipal Government there
24 has on occasion sold or transferred properties in a
25 similar circumstance to the private sector by tender.

1 The Federal Government has done the same -- similar
2 through the activities of the Canada Lands Company.

3 My question was a clarification from Mr.
4 Campbell as to whether the Province of Nova Scotia has
5 done similar activities with similar sites that the
6 Province has owned in the past.

7 THE CHAIRPERSON: Yes, and that was
8 something that I was asking a little earlier. But, Mr.
9 Campbell?

10 MR. CAMPBELL: Yes, there's other sites
11 around the province, as I talked about, shipyard sites
12 and things, that we have done remediation work on and
13 sold or leased in other areas of the province.

14 THE CHAIRPERSON: I suppose what I was
15 trying to explore is just how comparable are those sites,
16 I mean, in terms of -- and I kept my -- I kept
17 reiterating that what we'll have on the Coke Ovens Site
18 is a site with a cap that needs -- the integrity needs to
19 be maintained, we assume, for something up to possibly
20 beyond 25 years.

21 So, I -- you know, do you have knowledge
22 of similar sites that were actually capped in that way?

23 MR. CAMPBELL: No, I don't, certainly
24 nothing the equivalent of the site here that we've dealt
25 with.

1 THE CHAIRPERSON: Okay. Thank you. Thank
2 you, Mr. Ells. We're going to take a 20-minute break and
3 then we will come back for our final presentation from
4 the Department of Natural Resources.

5 It is now 3:40, so we'll be back at 4
6 o'clock. Thank you.

7 --- RECESS: 3:40 P.M.

8 --- RESUME: 4:02 P.M.

9 THE CHAIRPERSON: We will now resume the
10 session. We have our final presentation of the day, and
11 we're very pleased to have the Department of Natural
12 Resources with us. And so you have a maximum of 40
13 minutes for your presentation and we are very pleased to
14 hear it.

15 --- PRESENTATION BY NOVA SCOTIA DEPARTMENT OF NATURAL
16 RESOURCES (MR. TERRY POWER)

17 MR. POWER: Thank you very much, Madam
18 Chairman, Mr. Charles, Dr. LaPierre, representatives of
19 the Sydney Tar Ponds Agency. On behalf of the Nova
20 Scotia Department of Natural Resources I'd like to thank
21 you for the opportunity to speak to the issue of
22 remediation of the Sydney Tar Ponds and Coke Ovens Sites.

23 The recommendations that we bring forward
24 today are based on the need for application of standards,
25 appropriate standards with regards to both collection and

1 interpretation of scientific data, information, and
2 bringing that information forward to make the best
3 decisions we can for conservation and wise use of
4 wildlife and wildlife habitat. And I'll speak to two
5 specific recommendations that were brought forward and
6 responded to by the Sydney Tar Ponds Agency.

7 Recommendation No. 1, and this references
8 the current standard which is the Guide to Addressing
9 Wildlife Species and Habitat in an EA Registration
10 Document. The recommendation is:

11 "The Proponent must apply the current
12 standards as set forth in the Guide
13 to Addressing Wildlife Species and
14 Habitat in an EA Registration
15 Document to the treatment of priority
16 wildlife species to ensure that
17 issues related to these species as a
18 result of the undertaking are fully
19 addressed."

20 Recommendation No. 2 in reference to the
21 current standard of the Canadian Wetland Classification
22 System.

23 "The Proponent must apply the current
24 standards for classification of
25 wetlands as set forth in the Canadian

1 Wetlands Classification System to the
2 assessment of wetland habitat which
3 currently exists in the North and
4 South Tar Ponds. The Proponent must
5 commit to a compensation and
6 restoration program for wetland
7 habitat which will be lost as a
8 result of the Sydney Tar Ponds and
9 Coke Ovens remediation project in the
10 spirit and in the context of the
11 federal policy on wetland
12 conservation."

13 Before I continue, I'm remiss in not
14 taking the opportunity to introduce myself, so I'll do
15 that now.

16 My name is Terry Power and I am the
17 regional wildlife biologist for Cape Breton and Richmond
18 Counties for the Department of Natural Resources, the
19 Nova Scotia Department of Natural Resources.

20 MR. ENGLISH: My name is Bill English, I'm
21 the regional resource manager for the Nova Scotia
22 Department of Natural Resources.

23 MR. POWER: Thank you. Could I have the
24 first slide, please. This may be a bit difficult to read
25 but I will read through it for everyone's benefit.

1 Now, this is an example in terms of
2 applying the standard which is set forth in the Guide to
3 Addressing Wildlife Species and Habitat in an
4 Environmental Assessment Registration Document, and we
5 bring forward the example of boreal salt lichen, which is
6 endangered, currently listed as endangered both under the
7 Species At Risk Act -- that's the federal act -- and also
8 the Nova Scotia Endangered Species Act.

9 Boreal salt lichen is a cyanolichen which
10 is extremely sensitive to air-borne pollutants, including
11 acid rain and sulphur dioxides, and is one of several
12 species of lichens that need pre-monitoring and
13 consideration in the EA prior to any approval being
14 granted for incineration.

15 The geographic area considered in the
16 current EA analysis was not large enough to adequately
17 address potential impacts of air-borne transport on RAER
18 species and those known to be at risk.

19 In the example you see before you the
20 distribution of boreal salt lichen, *aeroderma distel*
21 *laden (sp)*, is shown and it indicates essentially two
22 things, the distribution of this species, this lichen,
23 prior to 1995 from the records that we have and those
24 following 1995, and you'll note that since 1995 all but
25 42 of the original occurrences of this species have been

1 lost.

2 Now, cyanolichens are an important
3 indicator of air quality and could be considered, I
4 guess, similar to canaries once used in coal mines in
5 that regard.

6 Nova Scotia still, fortunately, has one of
7 the richest lichen forests in North America and this
8 suggests, of course, that our air quality is fairly good.
9 But in any case, it is somewhat diminished compared with
10 other provinces, such as Newfoundland.

11 Experience in Europe, particularly in
12 Scandinavia, has shown that close monitoring of these
13 types of lichens, cyanolichens, including boreal salt
14 lichen, after approvals for certain projects -- certain
15 developments were granted, only served to document the
16 extirpation of these species.

17 So, what is required? We are requesting a
18 revised desktop analysis extended to include a 100-
19 kilometre perimeter with attention to all species listed
20 as red, yellow, undetermined or with formal protection,
21 under SARA or the Nova Scotia Endangered Species Act.

22 Pending the outcome of a desktop analysis,
23 additional inventories may be required. Potential
24 impacts of air-borne pollutants on cyanolichens in
25 particular requires inventory and pre-monitoring to

1 establish thresholds of air quality prior to any approval
2 for incineration being granted.

3 The second issue, the second
4 recommendation which I'd like to talk about, regards
5 wetlands and the loss of wetlands. There has been a
6 history of wetland and coastal habitat loss in industrial
7 Cape Breton. Wetlands in estuaries such as the Tar Ponds
8 Site have been considered as wastelands in the past,
9 convenient dumping areas to dispose of unwanted products.

10 Estuarine and salt marsh habitat both
11 within the North and South Tar Ponds will be lost and/or
12 altered with the proposed treatment plan brought forward
13 in the EIS. Displacement of migratory and resident
14 wildlife will occur. There is no intent in the EIS to
15 restore or compensate for the loss of wetland and
16 intertidal habitat.

17 Now, to provide a bit of context, the Tar
18 Ponds are contaminated and require remediation. The
19 proposed plan is to infill most of the Tar Ponds site.
20 The figures given in the EIS are 31 hectares of habitat.
21 Although their quality cannot be debated -- or can be
22 debated, the Tar Ponds still have wetlands and they do
23 provide wildlife habitat.

24 The mitigative approach used in Nova
25 Scotia that has been adopted by both Federal and

1 Provincial Governments in review of proposed projects for
2 wetlands, and this is the mitigative approach of
3 avoidance, mitigation, and if mitigation is not possible
4 to move towards some sort of a compensation arrangement.
5 For unavoidable loss of wetland such as the current
6 situation, restoration or compensation is required.

7 So, what is needed is to adhere to the
8 intent of federal and provincial policies on wetlands, to
9 commit to compensate for loss of wetland and intertidal
10 habitat and to develop a plan that restores adjacent
11 coastal wetlands for displaced wildlife. Thank you very
12 much.

13 THE CHAIRPERSON: Thank you very much, Mr.
14 Power, for your presentation. I'll turn to my colleagues
15 for questions.

16 --- QUESTIONED BY THE JOINT REVIEW PANEL:

17 DR. LAPIERRE: Good afternoon, Mr. Power.
18 Thank you very much. I have a few questions for you, and
19 the first one relates to that 100-kilometre radius that
20 you indicate should be part of the sampling procedures.

21 Could you indicate how you arrived at that
22 100-kilometre procedures [sic]? Did you -- I'm sure
23 you've looked at the modelling that the Tar Ponds Agency
24 has put out as far as to where the regions of impact
25 might be and the deposition which the model has

1 predicted.

2 It seems to me that that's much smaller
3 than that 100-kilometre radius buffer that you're talking
4 about. Could you provide some rationale for that?

5 MR. POWER: Okay. If you were able to
6 refer to the Guide to Addressing Wildlife Species and
7 Habitat in an EA Registration Document which I have
8 referred to, you would note that in the initial phase,
9 the initial step of the analysis, the requirement would
10 be to make a list of all priority species and that would
11 include species listed under the Endangered Species Act,
12 the Nova Scotia Endangered Species Act, as well as those
13 listed under the federal Species At Risk Act, and in
14 addition those species listed as yellow or red under the
15 Nova Scotia General Status Assessment process.

16 So, once having done that, the idea of the
17 100-kilometre radius is to narrow down the focus rather
18 than to broaden it, it's to narrow it down to that
19 physiographic region which is considered by the standards
20 of the size of Nova Scotia and in that context to narrow
21 it to a reasonable number of species to deal with, which,
22 in fact, occur within that smaller radius, and then from
23 there to go forward to the next step.

24 DR. LAPIERRE: Okay. That's fine. I
25 understand the reason for it. The next question I have

1 is, SARA species that are listed and the Nova Scotia
2 Endangered Species list, are both processes -- is the
3 process for having a species placed on the Nova Scotia
4 list as stringent as the SARA process?

5 MR. POWER: I can't speak to the
6 stringency of the process, but what I can say is that the
7 federal system and the provincial system are
8 complementary and they're designed with different
9 purposes in mind.

10 The Federal Government has authority for
11 certain species in their jurisdiction, the Province has
12 other species which we are responsible for in terms of
13 management, and they are a complementary process.

14 DR. LAPIERRE: So, I guess the short
15 answer I'm looking for; are there species on the Nova
16 Scotia list that are not on the SARA list?

17 MR. POWER: Yes, that's correct.

18 DR. LAPIERRE: Okay. Many?

19 MR. POWER: There are a number but it's a
20 growing list. The Nova Scotia Endangered Species Act is
21 relatively new and the list is growing fairly slowly over
22 the last number of years.

23 DR. LAPIERRE: Okay. Well, I guess that
24 answers those questions. I do have a general question as
25 it relates to the site. You indicated that wetlands

1 would be lost. However, in remediating the lands there
2 will be some -- there won't be wetlands created, not as
3 the plan is presently proposed, but there could be some
4 other terrestrial habitat.

5 Do you give any value to a different sort
6 of habitat when you look at assessing, or does your
7 policy indicate that one wetland habitat loss must be
8 replaced by another wetland habitat?

9 MR. POWER: Okay. I guess the mitigative
10 process for wetland conservation that I spoke to earlier
11 does focus specifically on wetland and with the idea
12 being -- well, the federal policy, for example, mentions
13 no net loss in any circumstances, that's fairly clear.
14 The process that's used in the province is somewhat
15 different, but the idea is definitely to avoid any loss
16 at all.

17 If there is loss and it can be
18 demonstrated that it's for a larger purpose, that it is
19 necessary to proceed, then wetland restoration of a
20 similar habitat in a similar local area is the first
21 option, and then if that isn't possible, to follow that
22 with some kind of consideration for compensation.

23 DR. LAPIERRE: So, you wouldn't think that
24 a nice grassy mix of wilderness plants with shallow roots
25 that would be very appropriate for wild butterflies would

1 be an appropriate habitat to replace a wetland?

2 MR. POWER: No question it's valuable
3 habitat depending on the final land use, but I guess the
4 focus still is on wetland and wetland loss. And I'll
5 give you an example just for -- to provide a little bit
6 of context here in Nova Scotia.

7 The federal policy does recognize wetland
8 loss very clearly and in that you'll see statements
9 regarding different amounts of wetland loss that we've
10 experienced, and the figure that's cited, for example --
11 and this is relevant to the current situation -- in
12 Atlantic Canada we've lost as much as 65 percent of our
13 coastal salt marshes since, I guess, European settlement.

14 And that sort of loss puts this context in
15 a higher priority here because we are looking at coastal
16 wetlands and I guess the question is, can we afford to
17 continue to lose those?

18 DR. LAPIERRE: Okay. You related an issue
19 of your lichens and indicated that SO₂ was possibly a
20 source of contamination. Now, you understand that taking
21 a larger area, say the 100 kilometres that you're talking
22 -- you know, addressing as a possible monitoring site,
23 that there will be some SO₂ from the operations of the
24 incineration and the site. However, in the context of
25 SO₂, SO₂ is not only generated, it's generated by a

1 variety of sources.

2 Now, when you do assess the -- or would it
3 be a requirement that the SO2 assessment, when you look
4 at the species, would be in relation to the amount of SO2
5 that's going to be generated by this project versus the
6 amount that you could find in a water shed -- an air shed
7 of that size?

8 MR. POWER: I guess I should clarify, and
9 possibly with reference to the Guide to Addressing
10 Wildlife Species and Habitat once again.

11 The context there is to come up with a
12 priority list of species, those species at risk, narrow
13 it down to a 100-kilometre radius and then from there to
14 look at the area of impact of the undertaking, decide
15 whether suitable habitat for any particular species is
16 there in the area of influence, so you've narrowed it
17 again.

18 For example, as the regional wildlife
19 biologist for this area I'm quite aware that piping
20 plovers nest in our area, American marten inhabit the
21 highlands of Nova Scotia -- or of Cape Breton, and so
22 forth, Canada lynx.

23 When you do this assessment, obviously
24 those species won't be of concern. So, what you do is
25 you take that 100-kilometre radius, you'll end up

1 bringing in piping plovers, American marten and lynx,
2 then what you do is you look at the project, the
3 undertaking and the area that will be impacted by that
4 undertaking and you quickly realize that habitat for lynx
5 and marten and piping plovers does not exist in that area
6 of impact, so you turf them out.

7 The example that we do bring forward, the
8 example of the lichens, and particularly the
9 cyanolichens, is an example, it may or may not prove to
10 be in the area of impact of the undertaking, but if there
11 is suitable habitat there it quite possibly would occur
12 very close and, therefore, it would be something that we
13 would want to know upfront and to react to that
14 information appropriately.

15 DR. LAPIERRE: Okay. I guess one more
16 general question and then I have a personal one to ask.
17 Do you have -- does your department have provincial
18 authority to require compensation or to require habitat
19 -- the Proponent to construct habitat?

20 MR. POWER: We make recommendations to the
21 Nova Scotia Department of Environment and Labour and
22 those recommendations are considered and acted upon
23 appropriately.

24 DR. LAPIERRE: So, they have the
25 responsibility to enact those?

1 MR. POWER: Ultimately on -- yes, on those
2 decisions.

3 DR. LAPIERRE: Okay. I think it's in your
4 second slide you had a map of the lichens, if I can go
5 back to it. You don't need to put it on there, but I'd
6 just like -- I seen that slide and my personal comment
7 was I'd like to see a slide like that -- I don't know how
8 much -- how quickly you could do it for me -- for Cape
9 Breton to show me the emergence of the Mayflower over the
10 next couple of weeks.

11 And if you could tie that to, you know, a
12 good topographic series so when I try to get away from my
13 shabby-wacky hotel room for a few days I'd know where to
14 go.

15 THE CHAIRPERSON: I'm sorry, I'm going to
16 rule Dr. LaPierre totally out of order. He's beyond the
17 mandate of the Panel. [laughter]

18 MR. CHARLES: I have sort of a comment and
19 a question. My comment relates to the picture that you
20 show on a slide, and of course it's -- I don't know
21 whether it's up here, it's a picture of the -- headed
22 "Context of the Tar Ponds," and it's a lovely coloured
23 photo, and I must admit if I had seen that without
24 knowing it was the Tar Ponds I wouldn't have known it was
25 the Tar Ponds.

1 I'm just wondering at what time of year
2 was this taken, or is it the Tar Ponds?

3 MR. POWER: Well, you're absolutely right
4 in your first assessment, it is not a picture of the Tar
5 Ponds ---

6 MR. CHARLES: Good.

7 MR. POWER: --- either one of those
8 photos.

9 MR. CHARLES: It would have to be pretty
10 idealized.

11 MR. POWER: Yeah.

12 MR. CHARLES: So, it's not a picture of
13 the Tar Ponds?

14 MR. POWER: It's an example, I guess, of a
15 disturbed site versus a less disturbed site.

16 MR. CHARLES: Okay. I guess I was
17 confused by the caption that went along with it. The
18 text says, "The Tar Ponds are contaminated and require
19 remediation," and I looked over at the picture and it
20 sort of didn't connect.

21 MR. POWER: I apologize for that.

22 MR. CHARLES: No, I'm glad that was
23 clarified. I thought my eyesight was going.

24 The other thing is in the EIS there's some
25 reference to the American robin and how the American

1 robin is going to be affected by the bioremediation and
2 tilling of the soils and so on.

3 Do you have any concerns for the American
4 robin as far as this enterprise is concerned? Is it
5 going to be affected to the point that you have to worry
6 about it?

7 MR. POWER: In our original response to
8 the EIS we had looked at some of the figures for CoCs, I
9 think they were described as, on certain different
10 receptors, and the American robin was included in that,
11 and the window of time that's been given for impacts for
12 the, for example, land farming on the Coke Ovens Site and
13 so forth, is fairly insignificant overall considering
14 that those things have been going on for many, many
15 years.

16 And I guess the period during which the
17 undertaking will have an impact is quite a small window.
18 I think the figure given was one to three years for the
19 land farming operation.

20 MR. CHARLES: I think the mitigation
21 method proposed is to prevent them from nesting on the
22 Coke Ovens Site, so they're going to be displaced persons
23 for a while, I guess, are they?

24 MR. POWER: Yeah, I think that the -- sort
25 of the summation for that was that there will be some

1 displacement and disruption but it won't be anything more
2 than the normal population can withstand.

3 MR. CHARLES: So, you're more concerned
4 about lichens than you are robins?

5 MR. POWER: In this case that's the
6 example we used, yes.

7 MR. CHARLES: All right. Thank you.

8 MR. POWER: Thank you.

9 THE CHAIRPERSON: Thank you very much.
10 I'm now going to seek some questions. We are now past
11 our scheduled time to finish, so I'm going to really beg
12 you to be nice and concise, and if you really don't have
13 to ask a question that's fine, too. But I will speak
14 first to the Proponent.

15 Do you have any questions for Mr. Power or
16 do you have any clarifications you wish to present to us?

17 MR. POTTER: No questions at this time.

18 THE CHAIRPERSON: Okay. Thank you. Can I
19 just find out how many people have a question. I saw
20 Sierra Club, Mr. Ignasiak, Ms. MacLellan, Mr. Lelandais,
21 so that's four, is that right?

22 Okay. Let's start with Sierra Club, and
23 I'm going to say please be brief, five minutes max,
24 please.

25 --- QUESTIONED BY SIERRA CLUB OF CANADA (BRUNO

1 MARCOCCHIO)

2 MR. MARCOCCHIO: Thank you, Madam Chair.
3 Good afternoon. I have -- I listened with interest to
4 your recommendation about using cyanolichen monitoring,
5 but I wonder whether you are familiar with the example
6 around the PCB incinerator in Swan Hills, Alberta that
7 through the ongoing contamination of the day-to-day
8 operations of that plant there is a health advisory for
9 30 kilometres surrounding that plant against both fish
10 and wildlife.

11 A two-part question. Are you aware of
12 that public health advisory and the monitoring that has
13 been done there? They obviously monitor game and fish
14 and also pine needles there, and I wonder whether you
15 might not think that a more complete monitoring program
16 that included things like pine needles and definitely
17 biological monitoring of the wildlife, especially getting
18 some baseline monitoring before the operations begin,
19 would be essential in establishing that there is or is
20 not any impact from incineration?

21 MR. POWER: Thank you for the question.
22 I'm not aware of the particular industrial development
23 that you refer to.

24 And, secondly, the example that we raised
25 is merely that, it's an example, the cyanolichens, in

1 order to illustrate the importance of using the standards
2 that have been set out for consideration of the priority
3 species, and we feel it is an appropriate example, still
4 only an example. We feel it is appropriate.

5 It's a Nova Scotia species that is of
6 concern, it is listed, and the cyanolichens in general
7 are very, very sensitive to particularly sulphur
8 dioxides. And, in fact, they are very sensitive but, in
9 fact, their sensitivities aren't even that well
10 understood. So, that's why we feel that precaution is
11 required in this case.

12 MR. MARCOCCHIO: Do you think more
13 generally that there's need for precaution with respect
14 to baseline biological monitoring of the various
15 components of the ecosystem like the fish, like the
16 wildlife, like the pine needles, that in other areas of
17 jurisdiction have shown to be the indicators of
18 environmental change and buildup of persistent organic
19 pollutants in the food chains?

20 MR. POWER: Again, the whole premise
21 behind the assessment process is to define what species
22 may be at risk of effects from the undertaking. I would
23 say let that assessment process drive the requirements
24 for monitoring and further follow-up. That is my answer.
25 Let the process give you that answer.

1 MR. MARCOCCHIO: The process. I'm not
2 quite sure what you mean by "the process." If you could
3 be -- elaborate?

4 MR. POWER: Well, if you're familiar with
5 this document, the Guide to Addressing Wildlife Species
6 and Habitat in an EA Registration Document -- if you're
7 not, I suggest perhaps that's a place to start and give
8 you that understanding, that in order to identify what
9 may be at risk and what the effects of an undertaking are
10 this is the first step, and let that give you that answer
11 as to what monitoring and recommendations may be
12 required.

13 MR. MARCOCCHIO: You, of course, wouldn't
14 mind putting that on the public record here?

15 MR. POWER: This is on the public record.
16 It's downloadable from the Nova Scotia Department of
17 Environment and Labour's website and it is tabled here
18 today as part of this information.

19 MR. MARCOCCHIO: Oh? Good. I have
20 another question about mercury and the mercury impacts on
21 fish. The first question is, are you aware that Grand
22 Lake has an advisory against consuming fish because of
23 the buildup of mercury in that system?

24 MR. POWER: I'm not specifically aware of
25 that. Nova Scotia Department of Natural Resources has

1 jurisdiction for some aspects of fisheries management and
2 that would be essentially the endangered species of that,
3 simply the listing process.

4 We are otherwise not responsible for
5 fisheries management. That would rest with the Nova
6 Scotia Department of Fisheries and Aquaculture -- sorry,
7 Agriculture and Fisheries. They keep changing the names.

8 MR. MARCOCCHIO: So, you don't have any
9 jurisdiction over the buildup of mercury and obviously
10 you're not in a position to comment on the emissions from
11 a proposed incinerator, mercury emissions on the ---

12 MR. POWER: That's correct.

13 THE CHAIRPERSON: That does bring you to
14 your five minutes, Mr. Marcocchio.

15 MR. MARCOCCHIO: Thank you.

16 THE CHAIRPERSON: So, thank you. Ms.
17 MacLellan?

18 --- QUESTIONED BY CAPE BRETON SAVE OUR HEALTH (MARY-RUTH
19 MACLELLAN)

20 MS. MACLELLAN: I'll be fairly quick.
21 And, Dr. LaPierre, I could probably show you where the
22 Mayflowers grow and bring you a bunch but I might be
23 perceived as trying to bribe the Panel then.

24 My question is regarding the wetlands and
25 the covering up of some of the wetlands, and you said

1 that they have to see that those wetlands are replaced.
2 But is there not a law in place now that says you can't
3 cover up wetlands?

4 MR. POWER: In order to entertain a
5 wetland infill or any sort of a proposal that may impact
6 a wetland a person needs to make application to the Nova
7 Scotia Department of Environment and Labour.

8 MS. MACLELLAN: So, it's up to the
9 Department of Environment and Labour, at their discretion
10 whether you can or can't fill in wetlands?

11 MR. POWER: Yes, that's correct, wetlands,
12 as defined under the regulations pursuant to that Act.

13 MS. MACLELLAN: Thank you.

14 THE CHAIRPERSON: Thank you. Mr.
15 Ignasiak?

16 --- QUESTIONED BY MR. LES IGNASIAK

17 MR. IGNASIAK: One quick one-minute
18 question. Some alternative technologies proposed by the
19 Remedial Action Evaluation Report and supported
20 overwhelmingly by the Cape Breton residents would totally
21 remediate the Tar Ponds to near pre-industrial wetland
22 conditions.

23 Has STPA ever requested your department to
24 look at such alternatives and evaluate them?

25 MR. POWER: The short answer is no.

1 MR. IGNASIAK: Thank you.

2 THE CHAIRPERSON: Thank you. Mr.

3 Lelandais?

4 --- QUESTIONED BY MR. HENRY LELANDAIS

5 MR. LELANDAIS: Yes, thank you, Madam
6 Chair. Most of my questions have already been answered
7 by previous people but I have one that remains that I'd
8 like to ask. Is it Dr. Power, Mr. Power?

9 The EIS on, I think it's Volume 6, page 47
10 and 48, states that there's a species of conservation
11 concern in close proximity to the proposed incineration
12 site.

13 I would like to ask you, have you been
14 made aware of this and do you know what the species is?

15 MR. POWER: I can't recall the answer to
16 that question.

17 MR. LELANDAIS: Thank you.

18 THE CHAIRPERSON: Can I -- the reference
19 -- so the reference does not name it, is that right, Mr.
20 Lelandais? And you can't recall but you do know, is that
21 right? In other words, can I ask you to provide that
22 information? Maybe I can get that from the Agency.

23 MR. LELANDAIS: That's what I was going to
24 suggest, Madam. Thank you.

25 THE CHAIRPERSON: Are you able to tell us

1 which species this is?

2 MR. POTTER: I'm going to refer that to
3 Shawn Duncan. I think he's got it right here.

4 MR. DUNCAN: The EIS, Section 6.7.4.2,
5 refers to the bulbous rush which is in the vicinity of
6 the Victoria Junction incinerator site. It's outside the
7 project area, it's been previously documented through
8 other environmental investigation near the Victoria
9 Junction wash plant site.

10 MR. POWER: Yes, I do recall that.

11 THE CHAIRPERSON: I think I -- you have a
12 follow-up, Mr. Lelandais?

13 MR. LELANDAIS: Yes, thank you. Now,
14 having established a species and where it is, is there
15 any concern of that -- you mentioned that it's not on the
16 site, but it is on the site and it is very adjacent to
17 the site and it certainly would be impacted by any
18 fallout from the incinerator. Are there any concerns in
19 that respect? Thank you.

20 MR. DUNCAN: We have no concerns with
21 regards to that particular occurrence.

22 MR. LELANDAIS: Okay. Thank you.

23 THE CHAIRPERSON: Okay. Thank you very
24 much. I think that does bring us to the end of this
25 session. Thank you very much to all our presenters,

1 thank you to all the participants who have been with us
2 today.

3 We have one more day before we get a day
4 off, and tomorrow we will be starting again at 9 o'clock
5 and we will have the first of our presentations from the
6 public. So, we'll look forward to seeing you tomorrow.
7 Thank you.

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9 (ADJOURNED TO SATURDAY, MAY 6, 2006 AT 9:00 A.M.)

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Janine Seymour, CCR
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Ruth Bigio, CCR
Gwen Smith-Dockrill, CCR

Friday, May 5, 2006 at Halifax, Nova Scotia