PUBLIC HEARING

SYDNEY TAR PONDS AND COKE OVENS SITES

REMEDIATION PROJECT

JOINT REVIEW PANEL

V O L U M E 4

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:	Wednesday, May 3, 2006
PRESENTERS:	Public Works Canada: Mr. Ken Swain Ms. Margaret Kenny Mr. Randy Vallis Mr. John Appleby Mr. Bruce Hilchey

---

Recorded by:
Drake Recording Services Limited
1592 Oxford Street
Halifax, NS B3H 3Z4
Per: Mark L. Aurini, Commissioner of Oaths

--- Upon commencing at 9:01 a.m.

THE CHAIRPERSON: Good morning, ladies and gentlemen.

I'd like to welcome you to this next day of hearings. We have three presentations scheduled for today from Public Works Canada and from NRCan and from Fisheries and Oceans.

But first, if we can begin with some housekeeping items.

So, I will turn to the proponents and ask if you have anything you wish to submit to us.

MR. POTTER: Not this morning, Madam Chairperson.

THE CHAIRPERSON: Okay. Thank you.

I would like to welcome the Presenters from Public Works Canada and ask you to begin your submission.

--- (PUBLIC WORKS CANADA) PRESENTATION BY KEN SWAIN

MR. SWAIN: Good morning, Madam Chair.

My name is Ken Swain and I'm the Atlantic Regional Director for Public Works and Government Services Canada, Office of Greening Government Operations.

I'm also the Federal Project Director for the Sydney Tar Ponds and Coke Ovens Remediation Project.

I grew up in Cape Breton, and I worked extensively elsewhere and now I live and work in Sydney.

In my work I've had almost 30 years experience in management consulting and audit of intergovernmental agreements and major projects including areas of accountability, assurance and advisory services.

I would like to take the opportunity to introduce those seated at my table.

Margaret Kenny is Director General of PWGSC's Office of Greening Government Operations and has had extensive experience in federal policy and the environment. She has been involved in this initiative for several years.

To her right is Bruce Hilchey. He's our Senior Legal Counsel for the project. Bruce supported the negotiation of the Memorandum of Agreement for this initiative and had responsibility for negotiation of its subsidiary agreements.

Bruce has over 30 years experience in Natural Resources, Aboriginal and Construction Law. He also has experience in legal issues associated with management and divestiture of contaminated sites.

To his right is Randy Vallis. Randy is our Senior Project Manager for the initiative. Randy has over 30 years experience in the environmental management

and remediation field and in contaminated site assessment and cleanup.

His work has included the Argentia Project, The Confederation Bridge and the cleanup of former DEW line sites. And to his right is John Appleby.

John is our Senior Environmental Assessment Manager for this initiative, and John has 25 years experience in resource management and environmental assessment, including extensive major project experience.

I'd like to begin my remarks by -- to the Panel by thanking you, Ms. Griffiths and Dr. LaPierre and Mr. Charles for your significant work and diligence, which has allowed us to come together and -- over the past few days and the coming weeks to discuss the environmental acceptability of this project.

I would also like to thank those members of the public, special interest groups and governments who have recognized the importance of this Project to the people of Sydney, and who have spent a great deal of time developing an in-depth understanding of the complex issues surrounding this initiative.

The undertaking being proposed by the Sydney Tar Ponds Agency is not a simple one. This exercise touches deeply upon many issues. They include human health, the natural environment, the local and

regional economy, and the overall sense of well-being and comfort associated with living and working in Sydney.

I'd like to talk about PWGSC for a moment.

PWGSC has been assigned a lead role on the part of the Government of Canada by virtue of its mandate and experience, and as the primary common service arm of the federal government.

In fulfilling this role in the past, our department has managed such projects as the cleanup of the Argentia US naval base in Newfoundland. We are a primary service provider to Indian and Northern Affairs Canada in its efforts to remediate multiple contaminated sites in Northern Canada, and we are also the lead -- the federal lead for the Confederation Bridge project between New Brunswick and Prince Edward Island.

As some of you may know, we are not new to the Sydney Tar Ponds and Coke Ovens Sites and surrounding environs. For example, we manage the North of the Coke Ovens Human Health Risk assessment on behalf of Health Canada.

We also provided management expertise during the phased environmental site assessment of the sites currently under consideration, and a variety of environmental and engineering services to early stages of the site preparation initiatives for this Project.

Our expertise in the management and remediation of contaminated sites is well recognized throughout the government and industry, and we are pleased and proud to be able to bring our collective experience to this initiative as well.

I would like now to speak about the Memorandum of Agreement which governs this initiative.

In February of 2004, The Government of Canada agreed that improving the environmental sites -- quality of the sites was necessary, and they agreed to commit up to $280 million dollars to the cleanup, as well as some further funding for its own operational obligations during the cleanup.

At about the same time, the Government of Canada started negotiations with the Province of Nova Scotia toward the realization of a cost shared initiative aimed at managing or eliminating environmental risk associated with the sites. After these negotiations concluded, the Minister of PWGSC, on behalf of the Government of Canada, and the Premier of Nova Scotia, on behalf of the Province of Nova Scotia signed a Memorandum of Agreement on May 12, 2004, detailing the federal and provincial commitments to the Project.

This MOA also provided an initial scope to the project, defined applicable timelines for its

implementation, defined other matters, and specified requirements respecting the development of project management and governance frameworks.

The MOA is specific with regard to the scope of the Project. Upon signing the MOA, the signatories agreed that the Project would include those main elements of the proposed Project which is currently before the Panel. To recap, these include:

- The removal and destruction of PCBs from the tar ponds as well as the removal and destruction of the contents of the tar cell on the Coke Ovens site with a proven technology such as high temperature incineration in a single use dedicated facility;
- The in-place treatment of the remaining contaminated material using proven technology such as bioremediation, solidification or other appropriate technology;
- The subsequent engineered containment of both sites;
- The site restoration and landscaping compatible with the natural surroundings and future use; and

- Provision for the ongoing future maintenance and monitoring of the sites for 25 years after completion of the Project.

This MOA also recognized the importance of establishing appropriate implementation agreements with the Province of Nova Scotia to accommodate and reflect comprehensive governance and accountability frameworks.

These agreements and the related frameworks were to be developed respecting the fundamental principles of sustainable development, protection of human health and the environment and sustainable economies.

The subsidiary agreements required by the MOA included: An interim governance and funding approval agreement; and an agreement concerning the process for undertaking preventative and preliminary works.

These two agreements have been negotiated and concluded as one agreement which governs -- this agreement governs our federal/provincial activities from the start of our work together until March 2007.

We refer ---

THE CHAIRPERSON: Mr. Swain, could I just interrupt you for a sec?

I just wonder if you could slow down just

a fraction, because you're reading from a text and I would like to really be able to follow. Just slightly slower.

MR. SWAIN: I'll do that. I may know it a little bit better myself by heart, so -- anyway the first two agreements were an interim governance and funding approval agreement and an agreement concerning the preventative and preliminary works.

And these two agreements were concluded as one agreement, and that's called an Interim Cost Share Agreement, and that has governed the start of our work together -- from the start of our work together until March 2007.

Two other implementation agreements are: An agreement describing in detail the specific elements of the Project -- and we refer to that as a Project Description agreement -- and a cost-share agreement for the entire Project.

And these two agreements are not yet concluded and they're only able to be concluded after completion of this environmental assessment and the government's consideration of the report of the Panel.

We were also required to conclude an agreement to carry out a joint environmental assessment.

This federal/provincial agreement provides

the framework for the joint environmental assessment that we are undertaking now, and that agreement was concluded between the Canadian Environmental Assessment Agency and Nova Scotia Environment and Labour.

And finally we were required to enter into an agreement to jointly appoint an independent engineer, setting out the duties of the independent engineer and the terms and conditions of the appointment.

That agreement was concluded and is in effect now and the independent engineer was appointed in October of 2005.

I've provided the Panel this morning with binders which contain these agreements, which have been concluded and with three of the management frameworks we have developed.

We are utilizing these tools to ensure that we meet our accountability and reporting requirements and our obligations to citizens that value is being achieved and that the funds have been utilized for their intended purpose.

These documents are subject to current and ongoing review and will undoubtedly take into account the deliberations after the receipt of the report of Panel recommendations.

So, what's the role of Public Works and

Government Services Canada in the initiative?

PWGSC has been assigned some of Canada's accountabilities for the Project and lead role in various aspects. Our role is to co-manage the administration of cost shared funds with the Nova Scotia Department of Transportation and Public Works, in accordance with the Memorandum of Agreement.

From the project's inception to its final completion we must ensure that the Project fits within the parameters identified in the MOA and the subsidiary implementation agreements. We must also make certain that the Project complies with federal and provincial requirements, including those related to environmental assessment.

In the latter regard, PWGSC is also a Responsible Authority for the Project pursuant to the Canadian Environmental Assessment Act. In this regard we play the lead role in the conduct of the Comprehensive Study Phase of the Assessment Process, which commenced in February 2005.

The outcomes of that phase directly resulted in the initiation of the current Panel process on May 2, 2005. At that time, a Ministerial Report was provided from our Minister to the Minister of Environment responsible for the Canadian Environmental Assessment

Act. This Report was accompanied by a letter from the PWGSC Minister recommending the Minister of Environment to refer the environmental assessment to a joint independent panel review process; a process that we are now undertaking.

PWGSC has also actively participated in and chaired a group of federal authorities and expert departments over the course of the Panel process to date. We refer to this as an interdepartmental discussion group.

The group has the overall role of ensuring that federal issues and areas of concern in relation to the environmental assessment have been adequately and effectively examined by all participants.

In addition to PWGSC, these participants have included: Environment Canada, Health Canada, Transport Canada, Fisheries and Oceans Canada and Natural Resources Canada.

These five departments provide scientific and regulatory advice in their domain with respect to the proposed project and its potential impact on health and the environment.

Our colleagues from Justice Canada have provided and will continue to provide all of the federal participants with advice to ensure that we are respecting

and complying with our legal obligations.

In addition, Enterprise Cape Breton participated in our discussions relative to their mandate for economic development and advocacy in the community.

So, what are the Project Parameters as laid out in the initiative.

The initiative has been negotiated and is defined in the Memorandum of Agreement. As we previously indicated, an agreement was required for interim governance and funding for the undertaking of preliminary and preventative works. These activities were to be funded out of the $400 million dollars identified in the Memorandum of Agreement.

And the preliminary works refer to: The creation and establishment of the implementing agency, the Sydney Tar Ponds Agency, and the funding for its development and operations.

Such activities as the development of the detailed Project Description and the Environmental Impact Statement.

The costs related to the independent engineer's appointment and work over the duration of the Project.

Development of work breakdown structures, risk assessment strategies and a variety of requisite

management frameworks, legal costs and funding most activities related to this Panel Review process.

The preventative works refer to four other initiatives identified by the MOA and include: The realignment of the Whitney Pier water main from a location on a part of the site which was contaminated to a clean portion of the site.

The realignment of the Coke Ovens Brook from a contaminated stream bed to a newly constructed site, which includes newly created fish habitat. This work began last year and will be completed in 2006.

The decommissioning of the Cooling Pond formerly comprising part of the SYSCO operations will begin this year, and the construction of a protection barrier across the north Tar Pond at Battery Point will also begin this year.

I should point out at this time that these projects have been independently assessed under the Canadian Environmental Assessment Act, and are specifically part of the Project now before the Panel.

These developments are interesting in and of themselves. All are crucial to overall success of remediating the study area and improving local environments.

What's also important to understand,

however, is that these works including the Sydney Tar Ponds Agency's project management costs, the independent engineers costs and the other costs I referred to are also out of the $400 million dollar amount allocated for the initiative, and they account for approximately $72.5 million dollars of the agreed upon funding.

The MOA limits total funding to 400 million, so I feel it's important to point out now that we have approximately $327.5 million dollars of funding available for the Project currently being assessed by the Panel, and not $400 million, as is commonly quoted in some media and elsewhere for the entire initiative.

To elaborate briefly on this point, a crucial component to the assessment of alternatives to the project and alternative means of carrying out the Project is the principle of economic feasibility.

This principle is required pursuant to the Canadian Environmental Assessment Act and its' consideration is also a requirement of the Environmental Impact Statement guidelines.

In this regard, it is necessary to reiterate that our mandate is to manage the total Government of Canada financial commitment, not to exceed $280 million dollars of the total $400 million dollars.

We consider economically feasible

alternatives to the project and economically feasible alternatives means of carrying out the Project, then, as being those alternatives which are affordable and within that funding envelope.

It's also an appropriate time to raise a related but distinctly different principle and that's of technical feasibility. It's also referred to by the Canadian Environmental Assessment Act and the EIS guidelines.

In this regard, the MOA is specific with regard to undertaking the Project using proven technology. As the federal lead department for the initiative, PWGSC takes this to mean technology previously successfully employed for projects of a similar size and nature. In this regard, we feel it's crucial that this be taken into consideration as the Panel develops related recommendations.

In terms of geographic extent, the MOA limits the Project subject to approved funding to the federally and provincially owned portions of the South and North Pond of Muggah Creed to Battery Point and the federally and provincially owned portions of the Coke Ovens site, including Mullins Bank.

PWGSC is satisfied that the footprint for the proposed Project is contained inside these

boundaries.

To summarize these points, we are satisfied that the proposed Project meets the parameters defined by the MOA.

To us, a project of this significance cannot be successful without the community's participation. We appreciate the opportunity afforded to the community to be fully engaged in this process and we want to move this initiative forward, one step further, by making sure that the community will benefit from the Project's activities.

To that effect, the Agency, the Sydney Tar Ponds Agency, has developed a comprehensive economic benefits strategy and we are confident that many local businesses will have the opportunity to directly benefit as a result.

As specified in the MOA, governments are also committed to hold discussions with the First Nation communities to enable meaningful economic participation in the Project. Over the past two years the Governments of Canada, Nova Scotia and of First Nations held discussions on the involvement of aboriginal owned companies in the Project.

This lead to the signing of a Protocol Agreement on October 28th of last year. This agreement

will facilitate ongoing discussions with First Nations communities concerning future opportunities for meaningful participation in the Project, leading to the development of an aboriginal procurement strategy.

In this regard, we are pleased to see that Nova Scotia recently approved and tendered an aboriginal set-aside for a preventative works project, the decommissioning of the Sysco Cooling Pond, which is valued at several million dollars.

In addition, we are also committed to see the Project area rehabilitated to enable future development. In this regard, we have been working with various stakeholders, including the Province of Nova Scotia and the Cape Breton Regional Municipality to help facilitate future land use planning for this land in the heart of Sydney.

The implementation of those agreements and some of the adaptive management tools and frameworks required by the MOA are aimed at ensuring financial, managerial, legal and environmental accountability on the part of the governments over the course of project delivery. They've paved the way for the remediation and subsequent long-term management of the sites.

In real terms, this means that all necessary mechanisms are now in place to successfully

manage the Project as it is currently described, or with modifications depending upon the outcome of the Panel process and subsequent government decision making.

In closing remarks, we would confirm that we support this initiative, as proposed and being reviewed, subject to any required modifications which may be derived from consideration of your report of recommendations. We anxiously await your report as we move forward with this.

We are committed to full compliance with all federal and provincial requirements that affect our initiatives and we are committed to successful achievement of the cleanup. I know that our federal colleagues in Environment Canada, Health Canada, Transport Canada, Natural Resources Canada and Fisheries and Oceans Canada share this commitment with us.

I would like to thank the Panel and the participants at the hearing today and over the last few days for all your attention.

I look forward, as we all do I'm sure, to a successful outcome.

I'll now invite any questions which the Panel may have. Thanks.

THE CHAIRPERSON: Mr. Swain, thank you very much for your presentation.

Before we do move to the questioning process, I am going to call a break for 20 minutes.

You submitted a binder to us last night during -- while we were sitting in the hearings. We haven't had a chance to look at the contents of this, and for that reason we would like to confer before we begin the questioning.

So, it is now 9:21. We will return and resume at 9:40.

RECESS: 9:21 A.M.

RESUME: 9:41 A.M.

THE CHAIRPERSON: The Panel is going to proceed with questions.

Before we do that, I know we've been receiving some questions regarding the process that will be used after the Panel questions.

So, I would just like to clarify that. After the Panel has finished its questions to the Presenters, we will then proceed with questions from other participants, and as per our procedures for the hearing, the order of questioning will be -- the proponent, The Sydney Tar Ponds Agency, will be asked if they have any questions, and we will then move to the order that was on the roster that we were using yesterday.

This means that the federal government, provincial government and municipal government will be asked if they have any questions. Following that, priority will be given to questions from other registered participants and before we start that process I may just go over the list of registered participants that I have, just to remind you who you are. Although, I'm sure you know.

And after that, I will call for questions from anybody else who isn't registered.

When you come to ask a question, we're going to again -- we'll see how much time we have. I will ask you to limit yourself. to come up and use the standing microphone in front of us, and I will ask you to limit yourself to one question and one follow-up question.

If time allows, and there's still interest, I will go back and we can have a second round of questions.

Now, in terms of the questions that the Panel is going to put to the Presenter, before we left for the break, I alluded to the fact that we had received the binder from the Presenters, the supporting documents submitted to the Joint Review Panel, May 3rd, and we had not had a chance to see this.

These documents will be put on the public registry, where other participants will have a chance to review them, and therefore it is possible that we may need to ask you to return at some other point during the Panel process, to answer questions after, after we, and other participants, have had a chance to review these documents.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA (KEN SWAIN)

--- QUESTIONED BY THE JOINT REVIEW PANEL

THE CHAIRPERSON: So, I guess the first question that I would like to ask, if you could clarify for us, in both actual dollar figures and percentages, exactly how the cost sharing is going to work in terms of the amounts that the federal government has committed to the preventative works and the amounts that have been committed to the Project that we are assessing, for the amounts and the split that that constitutes.

MR. SWAIN: Yes, I can do that. The Memorandum of Agreement has cost ---

THE CHAIRPERSON: Could you move a little closer to the mike, move it a little closer to you, so that you get a little louder.

MR. SWAIN: The Memorandum of Agreement provides, under the Project Funding Component, which is

Section 2, an indication that the total cost of the Project shall not exceed $400 million dollars, and that's Clause 2.1.

Clause 2.2 indicates that Nova Scotia shall contribute to the cost of the Project the lesser of 40 percent of the actual cost incurred, or $120 million dollars. And Canada shall contribute to the cost of the Project an amount that will not exceed $280 million dollars.

In effect, what that means is that there's a 60/40, 60 percent federal, 40 percent provincial cost sharing ratio for the first $300 million dollars. At that point the funding for the Project as laid out in the Memorandum of Agreement is 100 percent federal funding for the next $100 million dollars.

THE CHAIRPERSON: This means that -- the cost sharing on the preventive works, how are you applying that?

MR. SWAIN: Yes, the ---

THE CHAIRPERSON: Do you apply it for units within that? The preventive works have been shared 60/40?

MR. SWAIN: 60/40, yes.

THE CHAIRPERSON: And could you just get the dollars amounts for that, then?

MR. SWAIN: The current estimated cost of the preventive works are in the range of $17 million dollars. These numbers fluctuate a little bit based upon the refinement of engineering estimates.

So they'll be shared 60/40. Sixty percent federal, 40 percent provincial.

THE CHAIRPERSON: So, this means that of the three of the -- now, just repeat for me the amount of money that you are saying is now left for the implementation of the Project that we have before us?

MR. SWAIN: $327 and a half million dollars is the latest budgetary estimate.

THE CHAIRPERSON: So this means that the amount that's going to be cost shared 60/40 is 227.5 million, and the last one hundred million is going to be a federal contribution.

MR. SWAIN: That's correct.

THE CHAIRPERSON: Could you explain whether, in fact -- where these dollar figures that are in the agreement are in 2004 dollars or are they indexed in some way?

MR. SWAIN: They were 2004 dollars.

THE CHAIRPERSON: I think it would be helpful to us and to other people in the hall, if you could fairly briefly walk us through the high points of

the supporting documents that you have provided.

MR. SWAIN: Sure, I can do that.

I've provided two -- as I referred to in the presentation -- two of the implementation agreements that we've concluded.

One is what's referred to as an interim cost share agreement, and that deals with our initial governance and funding arrangements that's between the Province of Nova Scotia, the federal government and it includes the Sydney Tar Ponds Agency, as part to that agreement, as they had specific responsibilities and reporting requirements.

That interim cost share agreement identifies the funding provisions, but it's intended to cover the activities related to the preliminary works, which included the establishment of the Implementing Agency, the Environmental Assessment and a number of other administrative and operational activities required to manage the project, and it actually included the four preventative works -- projects that we referred to.

So, that's the Interim Cost Share Agreement. It's structured consistent with the provisions of federal policy and federal accountability requirements with respect to a typical federal/provincial transfer payment arrangement.

It respects those policies. It was negotiated with the Province of Nova Scotia over a period of several months, following the Public Works' assignment as federal lead of the Project, and it was effectively concluded late in 2004.

The second agreement that I've provided you is -- and the duration of that agreement is to March 2007. Just in context, we knew that this environmental assessment was required and we knew that the characteristics of the Project and the requirements for conducting the Project may change as a result of this environmental assessment. So, we decided that we would negotiate an interim agreement for the first approximate three year period of the initiative to deal with the activities so that we can move forward with creation of the infrastructure to manage the initiative and the preventive works projects.

The second agreement that I've included in the binder I have before you is the Independent Engineer Agreement. And we were required, pursuant to the Memorandum of Agreement, to jointly appoint an Independent Engineer to essentially serve as a monitor, a watch-dog, if you will, on behalf of both federal and provincial governments, to assess that the engineer progress, the physical progress, the financial matters,

environmental compliance, those issues were being addressed by the Sydney Tar Ponds Agency during the life of the initiative.

That agreement is accompanied by a contract which has some confidential provisions, and the cost of the independent engineer's work over the 10 year life of the initiative is currently estimated to be about $12 million dollars.

We can give you more information on the roll of the independent engineer if you so desire after.

The third document that you have in your binder is a Project Management Framework. And the purpose of a Project Management Framework is basically to refer us back to the Memorandum of Agreement, to consider how it should be managed in the context of effective project management requirements and effective project management practices.

What it does it lays out our accountabilities in respect of the Project from a federal perspective. It lays out provincial accountabilities for the Project, which consider the responsibilities of the Memorandum of Agreement, and it identifies that some of these are singular -- singularly federal responsibilities, some provincial responsibilities, while a number of them are joint responsibilities.

There's a table, the third page in of that framework, which identifies the federal/provincial joint responsibilities.

As you drill deeper into that document you can see that there is an identification of the Independent Engineer's responsibilities in a bit more detail. As well, there's identification of going down to committee structure and the responsibilities of individual senior managers.

In addition, there's a schematic in there, which outlines the overall management structure for the project and how things fit together.

There third document -- the fourth document, second framework, is called a Results Based Management and Accountability Framework.

This framework is built on a federal policy and on a policy which requires some form of risk assessment to ensure that essentially you are managing all accountabilities and obligations and reporting requirements for the Project.

Again, it identifies and segregates the accountabilities of the parties and ensures that we have an appropriate structure built, so that we can meet our responsibilities on behalf of the federal government, as providing federal oversite of the Project, as well as

meeting our management, accounting and reporting requirements.

If you refer to the first long page, the first 8 1/2 x 14 page, which is page 12 of that document, you can see that we've built a logic model which essentially, if you take a bit of a look at that, it essentially describes the key elements of the Project and then builds up through to the outcomes on behalf of the Government of Canada.

The purpose of this is to ensure, typically, that we are achieving the proper outcomes and achieving results and value for money for taxpayers dollars.

So that is the Results Based Management Accountability Framework. It's a form of risk management and assessment that we use for the Project.

The fifth framework, again deals with risk. It's a Risk Based Audit Framework, and it's the last document in your binder. It's drilling down more into an auditing and verification exercise, where we want to make sure that we have appropriate controls in place to continue to monitor and account for the funding and for the outcomes that are required from the Project.

It lays out some requirements for procurement audits, it deals with audit and evaluation

issues, and we certainly intend to make sure that there is appropriate accountability and control over the outcomes here.

We know that we have a responsibility to do that, and we also know that we are certainly going to be subject to evaluation and subject to audits over the course of the Project, and we want to be prepared for those.

The first of those will happen in the third quarter of this year, when we have an independent audit and evaluation being conducted on the Project activities to date.

THE CHAIRPERSON: Thank you. Obviously there's a fair bit of detail in this document and we will be interested to take a closer look at it, and as I say may need -- have further questions.

I would -- I wonder if you could walk me through your involvement or Public Works Canada's involvement with the developments of the Project that is, in fact, being assessed now in terms of the selection of that particular option. If you could just tell me how much involvement you had in that.

Now, in the EIS on page 2-80, there's a reference to -- there's a brief description of the process whereby the RAER options were -- some additional

government generated options were added to the RAER options, and those were evaluated and the current Project was selected from that.

There is a reference to the fact that you participated in the recosting of the -- some of the RAER options, of redoing those cost estimates.

I'm just wondering, can you tell me how much involvement in that, and when you became involved in the evaluation or if you became involved in the evaluation of those options, noting that the -- in the Memorandum of Agreement, which -- that process is noted as taking place in 2003 -- but the Memorandum of Agreement was signed in 2004, and is it somewhat more general in terms of its scope, in terms of the actual technologies used, than what appeared to be the result that was coming forward in 2003.

MR. SWAIN: Yes. Just give me one moment.

During that period before our assumption of responsibility for leading the federal interest in the file, with the signing of the Memorandum of Agreement in May of 2004, up until that period -- and I believe I referred to it in our presentation to some extent -- we are a common service provider for the Government of Canada, and we did participate in some of these activities in providing some analysis, some support, and

as required by our client departments, who, in that case, were Environment Canada and Health Canada.

So our role would have been limited to one of support, but not of decision making.

THE CHAIRPERSON: Did you participate though in the -- in providing advice with respect to recosting some of those RAER options?

MR. SWAIN: I believe we did. I'll ask Randy Vallis to give you a bit of an explanation on that issue.

MR. VALLIS: Yes, back in June 5 of 2003, our engineers provided a report with respect to the preliminary risk analysis of the Sydney Tar Ponds and Coke Ovens site ---

THE CHAIRPERSON: Excuse me, could you move closer to the mike.

MR. VALLIS: Our mandate back in 2003, was Public Works provided, was to review the cost estimates presented in the RAER and to identify the likely range of project costs, should any confirmation of considerations of options proceed.

Our engineers sat down and reviewed all of the options in terms of project management costs and those items of that nature, and we provided back to them what we expected some of the issues that they should

consider. But as for the actual decision of which options to choose or select that was not in our mandate.

THE CHAIRPERSON: Thank you. Can I -- a point of clarification on the Memorandum of Agreement, 1.2, the -- what's included in the project.

The first bullet -- just for clarification, the project shall include the removal and destruction of PCBs from the Tar Ponds.

I presume which PCBs are to be removed was not specified here, so -- as well as the removal and destruction to the contents of the tar cell, with a proven technology such as high temperature incineration in a single use dedicated facility.

I just want to know how is that to be interpreted? Is the single use dedicated facility a qualifier of the example of high temperature incineration, or is it a requirement of any proven technology to be use for the removal and destruction? I guess you could interpret it either way or the way that's -- but I'm sure you had some intent in mind.

MR. SWAIN: Your first question, removal of PCB's it is as is said, we did have a discussion about this outside of the negotiation. We weren't directly involved in the negotiation ourselves. We were supporting it. It does not indicate all PCB's but of the

PCB's the second item I believe you're correct. The single use dedicated facility is a qualifier to the high temperature incineration.

THE CHAIRPERSON: And not to any other technology that might be used for the removal and destruction?

MR. SWAIN: That's correct.

THE CHAIRPERSON: So we might want to put a comma after prudent technology? For each -- yeah. I guess a kind of follow up question for that is in terms -- are we to assume from this Memorandum of Agreement that any -- if any other version of the project, if the project does not, in fact, involve the removal and destruction of PCB's of some unidentified amount of PCB's from the Tar Ponds, if there were to be, for any reason whatsoever, a wish to change the description of the project to eliminate the removal and destruction of PCB's from the Tar Ponds, what would that do to this funding agreement, this Memorandum of Agreement?

MR. SWAIN: Yes, I believe I can answer that. The scope of the project as is defined under Clause 1.2 is proceeded by the phrase "subject to a joint environmental assessment, the project shall include...". We respect the fact that this environmental assessment is a critical part of the planning process for the project

and we await the report of recommendations to have governments make decisions. We -- a part of that process as is required by the Canadian Environmental Assessment Act is that we require to get governor and council approval for the decisions in moving forward with the project.

Irrespective of whether or not there are any changes, as part of our direction we were directed that if there are changes to the project, to the scope of the project as is defined in the direction we have for which this scope is consistent with that, then we also have to go back to cabinet, the Federal cabinet with option or options for their consideration. So any decisions arising from our review of the recommendations will be subject to cabinet approval.

THE CHAIRPERSON: So do I understand that to mean that this -- that there is -- that the possibility of considering some change to the project that would result in it falling somewhat outside this list of five bullets, is potentially possible. You have contemplated that. It doesn't mean that this gets torn up and you're right back to square one? And does it say that in the Memorandum of Agreement somewhere?

MR. SWAIN: Yes, the -- we understand that -- in fact we understand, we believe there's an

alternative presented in the Environmental Impact Statement. And I think that wording "subject to a joint environmental assessment" was to consider the fact that this scope of project as is defined in the MOA may change. And we would be required to go back to Federal Ministers on our behalf to get approval for any changes. It would be their decision to approve or not.

THE CHAIRPERSON: Okay, thank you.

MR. CHARLES: I guess just for the benefit of all of us here today, the project has a cap on it of four hundred million and you've spent seventeen million as I -- am I correct, in that's what you said so far in preventative works or preliminary works?

MR. SWAIN: The ---

MR. CHARLES: I wasn't sure I caught the right figure.

MR. SWAIN: Not quite that much. The preventative works are in progress. One -- the one of lesser value is the Whitney Pier water line and that one is complete. The rerouting of the Coke Ovens Brook is in progress. And the other two have just been put out to tender. So the majority of that, approximately seventeen million dollars ($17,000,000) is yet to be spent. To date, I believe the total expenditure on the project including this environmental assessment and the

operations -- the creation and operations of the implementing agency and other activities including the independent engineer is probably in the -- we don't have the detailed claims to date but it's probably in the range of about eleven to twelve million dollars ($11 to 12,000,000).

MR. CHARLES: Okay, I appreciate that information. I guess I was more concerned with the rest of the four hundred million. Do you consider that secure funding?

MR. SWAIN: To the extent that it's been approved in a budget but again according to the Act we're required to go back to governments with the options to proceed and those will be decisions of Ministers.

MR. CHARLES: So it's not a done deal?

MR. SWAIN: Not yet.

MR. CHARLES: Okay, the binder that you've given us does provide some details about institutional controls that you're trying to put into place. And I guess my question is, will the funding that is forthcoming as the project proceeds be tied to performance criteria?

MR. SWAIN: Yes, that's correct. The -- there are performance criteria embedded in those frameworks.

MR. CHARLES: Because I haven't had a chance the read the thing in detail yet so that's the reason I had to ask the question. And the independent engineer, would one of his functions or her functions be passing judgment on performance and whether or not things have been completed in a satisfactory way.

MR. SWAIN: Yes, I can ask Randy Vallis to give a bit more complete description of the role of the independent engineer in some detail exactly what the independent engineer's responsibilities are, if you require that. Essentially they're to judge the physical and financial progress of the project to ensure that the physical project is progressing. That the engineering is being done and the works are being carried out in accordance with the design and as well, there are financial monitoring features in there to ensure that the funding is being used for its intended purpose.

And to ensure that we have -- there will be a cost to complete mechanism to ensure that the cost to complete the project is in line with the funding allocation that we have. If that's not sufficient, I can ask Randy if you want.

MR. CHARLES: No, that's fine for the moment. We may be coming back to you at a later date in any event but I guess my main question was to whom does

the independent engineer report?

MR. SWAIN: The independent engineer reports to Public Works and Government Services Canada and the Nova Scotia Department of Transportation and Public Works.

MR. CHARLES: So it's not to the Tar Ponds Agency necessarily?

MR. SWAIN: No the independent engineer is monitoring the activities of the Sydney Tar Ponds Agency and reporting to governments.

MR. CHARLES: That's what I wanted to make sure about.

MR. SWAIN: There's a bit, again, in the project management framework. There's perhaps a bit better explanation of that if you refer to that particular document.

MR. CHARLES: All right. Well, I'll wait till I read the document and then if I have any further questions we can go to it. The -- we had some discussion over the last couple of days about monitoring and how long any monitoring of the project effects would go on. And I -- my understanding is that there will be a monitoring period of 25 years running from the completion date of the project which we assume will be ten years so if you add 25 to that it means 35 years. And is Public

Works going to be involved in the monitoring aspect of the project?

MR. SWAIN: The current project you have before you has -- or the Memorandum of Agreement certainly has a mandate for PWGSC to be leading the Federal interest for the duration of the project, including the maintenance and monitoring period. The actual responsibility for dealing with monitoring will be the Province of Nova Scotia's. Upon completion of the project and it's referred to in the Memorandum of Agreement an issuance of a Certificate of Project Completion -- in other words when the remediation is completed, the Province of Nova Scotia will be required to take ownership of the sites. And at that point the responsibility for maintenance and monitoring of the sites and for dealing with any liabilities associated with them will be -- will rest with the Province. There is one exception to that which is the safeguard that we built in in the event of -- and it's referred to in Section 6.0 of the MOA in the context of final provisions. And that basically is in event there is a significant unforseen issue or a required emergency response where in the opinion of an independent engineer there is some impairment of the project and in that case, in other words, from something completely unforseen like

a natural disaster or an act of God, then the parties are required -- in other words, the Federal and Provincial governments are required to sit together and deal with that issue.

MR. CHARLES: And what happens in the -- possible but we hope will never happen situation -- of a process or a technology being used that doesn't work. It's not a natural event. It's not an act of God. It's just a process that everyone thought would work but doesn't seem to work. What happens then? Who pays? What happens?

MR. SWAIN: Well, I think that would be -- that may also be covered and obviously there would have to be some negotiation about this under Section 2.6. It would fall within 2.6 or 2.7 of the Memorandum of Agreement.

MR. CHARLES: You'd have to go back to cabinet and get more money?

MR. SWAIN: Well, we would -- I guess we would have to address the impact of that situation at the time. As well, there is a provision in the project management -- that's -- the Memorandum of Agreement there is a provision in the project management framework. It's on page 5 of that framework and it talks about default. Issues of default and there are two issues there. One is

called non-specified default where there's non-critical integrity or insurance issues which the implementing agency in Nova Scotia would have to deal with. And there's also a category of default referred to as specified default. And that's where there is some critical financial failure or project abandonment for which both parties would be responsible for resolution. So there are features in the agreements and the frameworks that we've developed to deal effectively with instances of that nature.

MR. CHARLES: So the agreement does take care of that eventuality if it were to happen but it's subject to sort of negotiation between the two funding parties?

MR. SWAIN: That's correct.

MR. CHARLES: I guess the other element that was raised was the issue about bonding provisions and the possibility of having to pay compensation at some point in time if the effects of the project are such that other people suffer some kind of economic harm or other harm. Is there anything in your agreements that you're aware of that provides for bonds to be put up by any of the contractors or anything like this?

MR. HILCHEY: Just -- to answer that question very quickly, if there are problems we'll be

going against the experts who are advising us that this is a project that works. In other words, we are relying on professionals that have expertise and if things go wrong they'll be served with Statements of Claim and we'll be going after them. For bonding that again is an issue that the Agency, the Proponent is handling all the contracting and the normal procedures that are used by the Province of Nova Scotia with respect to bonding, we've been told will be followed by the Agency in awarding contracts.

MR. CHARLES: So the Public Works doesn't have any particular conditions or provisions relating to bonding? You're relying on the Government of Nova Scotia or the Proponent to take care of that?

MR. HILCHEY: That's correct.

MR. CHARLES: Thank you very much.

THE CHAIRPERSON: Before handing over to Dr. LaPierre, I'd like to just ask a follow-up question on monitoring. You may very well have said this and if so, I apologize. It must have gone over my head. I just want to be clear as to, at what point does the active involvement of Public Works and with respect to kind of auditing performance on the projects and does it -- did you say that at the completion of the construction that then that's the end of the contract with the independent

engineer? That's my first question.

MR. SWAIN: No, I think -- I believe Public Works and Government Services Canada responsibility deals with the scope of the project which includes the 25 years monitoring and maintenance.

THE CHAIRPERSON: All right. So all the way through to the end of that 25 years you will still be performing this role of insuring adequate performance of the duties under the agreement, is that right?

MR. SWAIN: That will be our responsibility, yes.

THE CHAIRPERSON: Thank you.

DR. LAPIERRE: Thank you. I do have a few questions. I asked you to beg with me because I had a glance right quite quickly through some of your reports but I did look at the liability and the technical work, framework and I have just two questions. One of them is would the engineer that you're hiring -- you indicated he reports to both your department and to the Province. But would he be also reporting to the Citizens Committee, liaison strategy, could they tap into that engineer for advice because you do in your framework ensure a community liaison structure.

MR. SWAIN: Yes, it's possible. Certainly the Community Liaison Committee meets weekly or monthly,

excuse me and there are presentations and from time to time they request others to come and provide them with advice and provide them with some reports so I think that would be considered if the request came from the Community Liaison Committee to have that.

DR. LAPIERRE: Another issue is Issue 4, page 9 of your management framework in which you identify that you'll adhere to standards and protection of environmental laws. I guess what I would ask is, would you require that all environmental standards meet or exceed Federal requirements.

MR. SWAIN: Could you just give us one second here? Yes, we will meet or exceed the standards that are required for the project.

DR. LAPIERRE: And that would also include the siting of -- and permitting of incinerator.

MR. SWAIN: In the event that they were required under Federal law.

DR. LAPIERRE: The next question I have is -- relates to project of this nature. Have you experience with such projects before, such as stabilization and incineration as they relate to a marine environment?

MR. SWAIN: I'll ask Randy Vallis to speak to that issue.

MR. VALLIS: We haven't been involved personally as in our department to the best of my knowledge in stabilization, ourselves. But we do have people who are working with our department who have specific involvement who have come from private sector working with government, with stabilization. As for incineration, again, it's the same situation. We do, in Argentia we are involved in incineration there or should I say, low thermal desorption of some contaminants there. And personally I've had involvement with Goose Bay incineration.

DR. LAPIERRE: So are you satisfied that the EIS demonstrate that careful consideration has been given to the projects for post-technologies and alternatives for this project.

MR. SWAIN: I believe we were fundamentally relying on the work of the panel in that regard.

DR. LAPIERRE: I just wanted to know if you had done your own assessment.

MR. SWAIN: I believe this reverts back to our mandate and our primary responsibility is to administer the funds in relation to the project and the ensure that there is appropriate Federal oversight and that we have in place accountability and reporting

mechanisms to track all those. For issues related to the science and the Federal implication in those areas, we would rely on the mandates of our colleague departments in Environment and Health and Natural Resources Canada. And others to provide us with that guidance. And to provide the Federal lead, if you will, in those particular areas.

DR. LAPIERRE: Thank you. In the MEK document, the study shows that -- you did mention in your report -- and the study shows that showing use of land near the VJ site. And then there's a map -- I don't really have it in my mind -- but it stops at the boundary of the Phalen site. I guess the question I have, are you satisfied that the assessment of the current uses, resource uses is complete and satisfactory within that report?

MR. SWAIN: I guess, again, Dr. LaPierre, I would fall back on our mandate in respect of that and we would rely on the judgment of our colleague departments.

DR. LAPIERRE: And I guess my final question is, are your dollars department dollars or Treasury Board dollars?

MR. SWAIN: Could you clarify what that means?

DR. LAPIERRE: Have they been Treasury Board approved?

MR. SWAIN: Oh, excuse me. We had to seek Treasury Board approval for the initial implementation of the preventative works and preliminary activities. And when we looked at how we would approach this at the start of the initiative when we took over responsibility for the initiative with the signing of the MOA, we realized that we couldn't really go forward and satisfy all of the accountability requirements of Treasury Board with respect to the complete project.

As well we realized we had to get some of these accountability mechanisms in place to be able to get the full allocation. So at this point, what we were able to secure from Treasury Board was the funding for the interim cost share agreement for those preventative preliminary works that will bring us up to March, 2007. What are process at this point is briefly, upon receipt of report of panel recommendations the Provincial and Federal governments will be required to enter into a negotiation to see how we respond to the report of panel recommendations.

Once we have effectively seen what or developed what our options are at that point, we'll be required to go back to -- on our side to Federal Cabinet

with a cabinet submission to see that they approve the options selected or give guidance in that area. Give direction in that area. The next step in that process is that we'll have to go back to Treasury Board to seek the balance of the Government of Canada's two hundred and eighty million dollar ($280,000,000) commitment or some other amount. If we're given direction by cabinet to seek some other amount.

DR. LAPIERRE: Thank you.

THE CHAIRPERSON: I just have a few more questions relating to the socio-economic effects of the project. I know this is something that you are interested in and you've referenced that. Well, first of all in your written submission to the panel which was Public Comment 37 it uses some of the same language that's found in the EIS, namely -- I quote, "Site restoration and landscaping compatible with the natural surroundings and future use." This is going to be a requirement for performance of this project. Do you have any comments about that requirement and are you, in fact, satisfied that the project that's as proposed and that the detail that we have in the -- that's been presented to us, in fact meets that requirement from your perspective?

MR. SWAIN: Yes, our understanding is that

the proposed future use of the site would be a mixture of park land and industrial commercial uses. And we're satisfied that the project as proposed can accommodate those particular uses. As well, we've had further discussions with other stakeholders on that matter with a view to getting clear vision on that.

THE CHAIRPERSON: Do you have any concerns about the viability of the proposed future uses on these sites with respect to the capacity of the capped and contained sites to support those uses in a way that is economically feasible?

MR. SWAIN: Yes, we do and I believe we're addressing them as we move forward.

THE CHAIRPERSON: My question -- so my question was do you have some concerns and you say yes -- is that right, you are agreeing that you do have some concerns regarding the viability of future uses?

MR. SWAIN: Certainly, we're engaged in -- I'll give you some context here. When we looked at some other significant contaminated sites last fall in the United States, one of the messages that was very strong and clear that we received from stakeholders in those communities was that you need to develop a clear vision of future site use as a means of insuring that something positive is out there.

When we come back from those trips we did find that we were able to initiate and facilitate some discussion amongst a variety of stakeholders in the local community. Initially that included the Cape Breton Regional Municipality, their planning department as well as the Province of Nova Scotia, some representation to Sydney Tar Ponds Agency and it progressively has involved other stakeholders in the community including the university. Including the airport authority, the port authority, the Chamber of Commerce and some other entities.

Basically there's a concept with CBRM and they may perhaps be able to speak to this more definitively in that there's a -- there is a view that there is a corridor between the harbour in Sydney running to the north of Grand Lake Road as far out as the airport that they would like to get some strategic vision for the future of CBRM. And the Sydney Tar Ponds and Coke Oven sites lie within that corridor. Certainly some of those entities including the airport authority and the port authority and the university have their own strategic direction but their long term objectives, although they're certainly in control of them may also impact some of the desired uses or some of the way that that corridor which is in that adjacent or parallel to Grand Lake Road

how it may be developed.

So from a strategic viewpoint we're discussing now -- we've established some -- a steering committee and a working committee to deal with that and we understand that the CBRM may take charge of that land use planning exercise. From our perspective, I believe the -- there certainly is concern about the use of the Tar Ponds site. I believe our -- that's where the parkland component of the future intended use may come in. The industrial commercial component may be more applicable to the Coke Oven site. So what we want to do is participate in the development of that overall concept but we want to make sure that any restrictions or any requirements to effectively protect the integrity of our sites are dealt with in the context of that broader land use planning exercise.

THE CHAIRPERSON: Do you have any concerns about if there were a possibility that there would be a hiatus between the completion of the remediation project and the actual development of future land uses?

MR. SWAIN: I believe we will still have, as I referred to earlier, responsibility for dealing with the ongoing monitoring and maintenance of the site so I believe that we will still be keeping an eye and making sure that there aren't any issues which affect the

integrity of the sites that we have control over.

THE CHAIRPERSON: Thank you very much, Mr. Swain.

MR. CHARLES: Just a follow-up on this monitoring, I may have misunderstood you earlier in terms of who has responsibility for the monitoring. I thought you just said now that Public Works would still be involved in monitoring. Now I'm not sure what period of time you're talking about but before I thought you said it would be turned over to the Province.

MR. SWAIN: Perhaps I misspoke. Certainly our responsibility will be one of oversight and insuring that the monitoring and maintenance of the site takes place in accordance with the requirements of the design which is to be developed in detail. But certainly as far as the responsibility for the monitoring it will be a Provincial responsibility, perhaps delegated to the Sydney Tar Ponds Agency but certainly the ownership of the sites reverts to the Province upon completion of the ten year project so that would be a Provincial responsibility. Our responsibility would be to make sure it happens.

MR. CHARLES: So you're looking at a three tiered possible monitoring system with the Tar Ponds Agency at the bottom, Nova Scotia supervising them and

them and then the Feds supervising Nova Scotia. Is that -- I mean, I'm simplifying it, I know but that's the way it sounds.

MR. SWAIN: It's probably part of the checks and balances that are necessary in something of this nature.

MR. CHARLES: Okay. Thank you.

THE CHAIRPERSON: I would now turn to the Proponents, Sydney Tar Ponds Agency. Do you have any questions for Public Works Canada?

MR. POTTER: Not at this time, Madam Chair but I would like to ask if we could revisit that later on depending on some of the questions that may be put to PWGSC, we have a chance to come back and ask questions at the end.

THE CHAIRPERSON: So I'm now going to open up the questioning until 11:00 to people in the hall and as indicated yesterday, I'm -- I've -- most of the faces here look very familiar so you heard me say this yesterday, as you know, we -- I expect -- I fully expect that all questioning will be carried out in a concise and courteous manner. And so we are going to go by the order of the roster and just so you know, I won't necessarily throughout -- all the way through to May 19th, I may change this up so you may not always have to wait to the

end if you happen to be unlucky enough.

But for today, I'm going to use this order so I'm just going to ask is there any other representative of the Federal Government agencies who have any questions they'd like to place to the presenters? Are there any representatives of the Provincial Government have a question? CBRM, the Municipality? Okay, we can move directly to our registered participants. I'm just going to go over this list once. I'm sure you can remember roughly what order you're in. Mr. Donald Deleskie, the Return to Sender Coalition. I don't believe he's here. Cape Breton Save Our Health Care Committee, if you have a question. So in this one round, one question and a follow-up please.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

--- QUESTIONED BY SAVE OUR HEALTH CARE COMMITTEE

MS. MACLELLAN: We will have a follow-up question as well. Who will make the final decision -- this is from me through the Chair to Public Works -- who will make the final decision on the panel's findings?

MR. SWAIN: We, Public Works and Government Services Canada will leave the development of options in considering the panel recommendations along with the involvement of other Federal departments. And the decisions will be decisions of the Ministers of the

Government of Canada.

MS. MACLELLAN: So I'm having a little bit of difficulty hearing you. Perhaps maybe when -- you can speak into the mike a little bit better but am I to understand then that Public Works will make the decision and refer it back to Ministers for a decision?

MR. SWAIN: We will develop, through negotiations with the Province of Nova Scotia what the option or options may be in moving forward with the project and the decisions will be referred to Federal cabinet on behalf of the Government of Canada.

MS. MACLELLAN: So essentially, it will be a Federal decision?

MR. SWAIN: On our part, it will be a Federal decision. On the part of the Province of Nova Scotia it will be a Provincial decision.

MS. MACLELLAN: But at no point in time will the Federal Government walk away given the fact that 60 percent of the funding comes from the Federal Government and all of -- and since Federal Government represents all of Canada and all of us Canadians, you will guarantee me that at no point in time will you walk away and let the Province have the final decision on the panel's findings?

MR. SWAIN: We have the responsibility to

manage ourselves in accordance with the Memorandum of Agreement and I don't believe the Federal Government will walk away. That's our current understanding. There is a legally binding Memorandum of Agreement that commits the Federal Government to this initiative.

MS. MACLELLAN: Yeah, I'm just asking this because somewhere on the web I found a little blip on an agreement that said that the panel decision would ultimately be in the hands of the Province. And it concerned me so much so that I put a letter to the Commissioner of Sustainable Development and the Auditor Generals' office and asked her to clarify this for us.

MR. SWAIN: No, this joint Federal/Provincial funding. So it's embodied in the Memorandum of Agreement that we have. The commitment's there.

MS. MACLELLAN: Thank you.

THE CHAIRPERSON: Thank you. Just to clarify, the Panel does not make a decision. The Panel makes -- prepares a report which includes recommendations. Just for use of mike purposes and the audibility and also because -- in fact, questions are being addressed through The Chair, when you answer if you answer to the Panel then you will be directed at the mike and it will be a little bit more audible, though I

appreciate why you wish to encompass the questioner as well. Kipin Industries is not here. Is that correct? Grand Lake Road Residents. Anybody here who has a question? Yes, Mr. Marmon.

--- QUESTIONED BY GRAND LAKE ROAD RESIDENTS

MR. MARMON: Dr. LaPierre asked if environmental laws would be followed and of course, the response was yes. But as CCM guidelines are not laws but guidelines, is Public Works responsible to ensure CCM guidelines will be followed as a condition of Federal funds being used on this project?

MR. SWAIN: I'd like to ask Randy Vallis to take that question please.

MR. VALLIS: As the implementing agency the STPA are required to respond and to carry out all applicable rules, regulations, guidelines and standards. Whatever they may be and they will be doing and applying those regulations to this project. And obviously we and Federal Government and Provincial Government will select legislation that is of the highest standards.

MR. MARMON: Thank you.

THE CHAIRPERSON: Cement Association of Canada. Portland Cement -- stop me if somebody's here on this list. Portland Cement Association. Cape Breton University. Dr. Ron MacCormick. Sydney Academy, Cape

Breton Chapter of JCI. Sydney and Area Chamber of Commerce. Cape Breton Partnership. Eco Canada. Sierra Club, do you have a question?

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

--- QUESTIONED BY SIERRA CLUB OF CANADA

MR. MARCOCCHIO: Thank you, Madam Chair. I'm asking a question on behalf of the Sierra Club of Canada. My name is Bruno Marcocchio.

THE CHAIRPERSON: Could you tip the mike so that we can ---

MR. MARCOCCHIO: Is that clear?

THE CHAIRPERSON: I don't know if it raises at all. You're a tall person.

MR. MARCOCCHIO: I'll lean in. Is that better?

THE CHAIRPERSON: It can be used as a hand-held mike, is that correct.

MR. MARCOCCHIO: No. Oh, actually it can. Yesterday, Madam Chair, Marlene Kane raised the Federal commitments that were made as part of the JAG process, that any Federal money spent on the project requires that the CCME guidelines are adhered to as a minimum. I have two letters here, one from the Honourable Sergio Marquis dated April 1977, where the Minister reiterates that at minimum, CCME guidelines will be adhered to in the

remediation of the Tar Ponds. And a second letter from David Anderson, the Minister of Environment to then MP Peter Mancini, both of which reiterate the Federal Government's commitment to comply at minimum with these CCME guidelines.

I'm not sure whether now is the appropriate time to enter these or during our evidence. I'll leave that with you, but my questions to Public Works and Government Services Canada are -- and I want to ask them, specifically, whether these guidelines, not legislation at minimum that had been promised us as a community, particularly with respect to a 1,500 metre set back from residential dwellings. But also that all contaminated sediments greater than 50 parts per million of PCB's will be excavated from the Tar Ponds and that the CCME Human Health Risk base soil quality guidelines will be adhered to in the remediation of the Sydney Tar Ponds and Coke Ovens.

MR. SWAIN: In answering these questions I would expect that we'd have to have a consult with Environment Canada on these issues and would like to ask for an undertaking to get back to provide the answers.

THE CHAIRPERSON: Okay, thank you. Well, we'll enter that into the record as a formal undertaking that you will provide an answer after consultation with

Environment Canada with respect to compliance or with CCME guidelines that were specified in the question. [u] Thank you. Do you have a follow-up question?

MR. MARCOCCHIO: Yes, there's a follow-up question that relates to this. It was another point that was raised yesterday. And that is a confusion about the boundaries of the project. It's our understanding from the Memorandum of Agreement that it includes the Tar Ponds. And that there's no specific reference to the eastern bank and this is particularly relevant with respect to the PCB contamination that has been acknowledged to exist under the slag pile that is continuous. That area for at least 100 metres to the east of the Tar Ponds was in fact, once part of that estuary.

And there is no artificial distinction drawn at the -- that edge of the slag pile and there's clearly contamination there. So my question to Public Works and Government Services Canada since this is Federal monies and they have a responsibility and oversight that they have outlined here today, to discuss if they would the responsibilities, particularly with respect to the migration of those PCB materials, hot spots in the unremediated areas directly adjacent, the -- underneath the slag piles that are part of the Tar Ponds?

MR. SWAIN: I'll ask Bruce Hilchey to address that issue.

MR. HILCHEY: Those -- I believe the area you're talking to is the SYSCO site. SYSCO site.

MR. MARCOCCHIO: It's the area directly to the east of the shoreline of the Tar Ponds. These -- all of this area is the SYSCO site so I'm a little confused by your question.

MR. HILCHEY: And the Federal Government has taken the position that that's the responsibility if there is any responsibility of the -- of SYSCO.

MR. MARCOCCHIO: The question was the specific responsibility of the Federal Government and its agent, the Public Works and Government Services Canada with respect to the contamination and migration in the groundwater into the harbour, post-remediation if this area is not addressed.

MR. HILCHEY: Again, I can only rely on the advice of our experts that they are addressing it if it has an impact on the Tar Ponds but what is underneath the SYSCO site is SYSCO's land. It's their responsibility.

THE CHAIRPERSON: Thank you, Mr. Marcocchio for that question. Mr. Ignasiak, do you have a question.

MR. MARCOCCHIO: Madam Chair, my question about when the appropriate time to put these into testimony hasn't been responded to.

THE CHAIRPERSON: I think you could put them in now.

MR. MARCOCCHIO: Thank you.

THE CHAIRPERSON: Thank you.

MR. IGNASIAK: Madame Chair, one quick question. In his presentation, Mr. Swain has stated on at least two occasions that solidification stabilization of tar pond sediment is a proven technology.

Could he identify the source of information on the basis of which the Public Works and Government Services Canada concluded that solidification stabilization of tar pond sediment is a proven technology?

MR. SWAIN: Just one second. I'm just looking for the reference in my presentation. I believe the only place I mentioned in my presentation about -- in reference to -- was in reference to solidification, and it was quoted from the scope of the project detail in the Memorandum of Agreement, and it refers to:

"The in-place treatment of the remaining contaminated material using proven technology such as fire remediation,

solidification or other appropriate technology."

As I had indicated previously, this is an agreement that was negotiated between the federal and provincial governments. The responsibility for Public Works and Government Services Canada came in after that agreement was negotiated, so the federal responsibility up to that point was primarily with Environment Canada and Health Canada, so I think I would have to refer that question to Environment Canada to provide an appropriate response.

THE CHAIRPERSON: Well, for the purposes of the Panel, I guess, a clarification is that you have not -- the position -- that you've taken a position that the stabilization and solidification for the purposes of this project is a proven technology. Is that right?

It's not that you're saying it isn't, but that you haven't made a decision with respect to that? Did you not answer Dr. LaPierre on that question that you're looking for some guidance from the Environmental Review?

MR. SWAIN: Yes, we are supporting the initiative in the project. The proposed project is consistent with the scope of the project as outlined in the Memorandum of Agreement, and we are relying on the

recommendations of the Review Panel to deal with issues such as this.

THE CHAIRPERSON: Thank you. Is there anyone here from Bennett Environmental or from the New Waterford and Area Fish and Game Association with a question?

Before I return to the top of the list for one more quick round, I will just speak to the proponent because you had indicated it's possible you might have a question.

--- QUESTIONED BY SYDNEY TAR PONDS AGENCY

MR. POTTER: Yes. I think the PWGSC has been clear on this, but I do want to ask the question one more time. Does PWGSC support the project?

MR. SWAIN: Yes. I'll answer that. We do support this project subject to any modifications which may be considered as an outcome of this Environmental Assessment process.

THE CHAIRPERSON: Returning to the list, unless I hear otherwise, I assume there's nobody here from Federal Government, Provincial Government or CBRM with a question now. The Save Our Health Care Committee, do you have one more question before we break?

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

DR. ARGO: Thank you very much. I'm concerned -- my particular concern has always been with incineration and the health effects of incineration. I am concerned that incineration will be applied -- the wording is the it's a proven technology, and in terms of the technology, that may be so, but the after effects of incineration, if you will, are also proven.

Has this been -- in making the decision to include incineration as a proven technology in the Memorandum of Understanding, has any consideration been given to the after effects of incineration, the health effects to the people?

MR. SWAIN: Yes, I believe that's why that reference is in the Memorandum of Agreement. Certainly there has -- there was significant discussion in the development of the Memorandum of Agreement, I understand, with Environment Canada and Health Canada, and the reason why we're before this panel is to deal with that very issue, and in any discussion from the Federal Government, we again would refer to our federal colleagues, primarily in Environment Canada and Health Canada, to address issues of that nature.

THE CHAIRPERSON: Thank you. Mr. Marmon, do you have another question? Is there another question from the Sierra Club?

--- QUESTIONED BY SIERRA CLUB OF CANADA

MR. MARCOCCHIO: Thank you. The contamination from the Coke Ovens and the steel plant has been shown to be flowing and continuous off the Coke Ovens and Tar Ponds site into the residential communities.

Can Public Works and Government Services Canada please undertake to provide the Panel with its view that the joint governments are responsible for the care and control of this contamination?

MR. SWAIN: Could we get some further clarification on that? I'm not sure that I understand the question.

THE CHAIRPERSON: Could you ask what -- is there something specific you wish to have ---

MR. SWAIN: Could he repeat the question, please?

THE CHAIRPERSON: Oh. Could you repeat the question, please?

MR. MARCOCCHIO: Certainly. The contamination from the Coke Ovens and the steel plant has been shown to be flowing and continuous off the Coke Ovens and Tar Ponds site into the residential communities.

Can Public Works and Government Services

Canada please undertake to provide the Panel with its view that the joint governments are responsible for the care and control of this contamination?

MR. SWAIN: To the best of our understanding, I believe that there are -- there is no off-site migration to properties, but we would rely on the Sydney Tar Ponds Agency and our federal colleagues to address that issue.

THE CHAIRPERSON: Thank you, Mr. Swain. Do you have a very quick follow-up question for that?

MR. MARCOCCHIO: Well, just -- yes. It's clear that there is migration from the Tar Ponds site into the community and eastward from the Coke Ovens site into the community that were referenced in the EIS, where it was pointed out that the appropriate regulators should be -- should address these issues, which is the genesis of this question to Public Works and Government Services Canada. It's rather confusing and stunning that they appear to be not aware of these issues outlined in the EIS.

So the question is are you aware of those issues and what action and what responsibility with respect to care and control does Public Works and Government Services Canada undertake?[u]

MR. SWAIN: Again I believe there's an

opportunity for us to discuss this with Environment Canada and Health Canada, and in so doing, I would expect that with your approval, we'll have an undertaking to do that.

THE CHAIRPERSON: Okay. We will take that as an undertaking. Thank you very much for that question.

DR. MARCOCCHIO: Thank you.

THE CHAIRPERSON: I will ask Mr. Ignasiak, and then I apologize, I forgot to put a call for questions from the public, but I will do that. Mr. Ignasiak, do you have another question? You have no other questions.

Are there members of the public in the hole[?] who have questions who are not registered participants? Yes. Please come forward to the mike.

--- QUESTIONED BY MS. ADA HEARN

MS. HEARN: My name is Ada Hearn. Thank you for your time. You said earlier that if things go wrong and the project fails, you have statements of claim from contractors and will go after them. Correct?

MR. HILCHEY: Yes.

MS. HEARN: Okay. Well, when the first clean-up failed, did you recoup money lost from those contractors who built the first incinerator, the failed

incinerator?

MR. HILCHEY: Well, at that time, it was -- Public Works wasn't involved in that project. Okay? We've -- I think that we've learned lessons from what has happened in the past. I couldn't speak -- I couldn't give you an answer on that. That wasn't -- it wasn't something we were involved with.

MS. HEARN: Who was?

MR. HILCHEY: I believe that was a provincial initiative.

MS. HEARN: So you do have guarantees to go after these contractors if this project fails?

MR. HILCHEY: Well, again, in any -- in any contracting situation, you start off hiring the best people that you can, the best experts, and we feel that based on what we've heard from the Sydney Tar Ponds Agency and its experts, that they are the best in the world.

Now, after that, it's a question of the contracting -- contractors doing the work as it's engineered, and in a project -- on any project, there can be unknowns, and we feel that there's a process in place to deal with unknowns before they get out of hand. But 25 years ---

THE CHAIRPERSON: Could I perhaps -- oh,

I'm sorry.

MR. HILCHEY: I'm just saying, in 10 years from now, 25 years from now, we expect that this project will be there and it will be -- its integrity will be maintained and that there will not be any problems. Otherwise, we wouldn't be going into it at this point.

THE CHAIRPERSON: Well perhaps I could ask a follow-up question, if I may, to that. I guess -- I think what is being asked here is what involvement Public Works Canada in terms of your whole risk management approach that you're taking -- what role would ensuring that appropriate whatever, guarantees, bonding, what kind of insurance policies with respect to what -- do you have a role in making sure that those -- are they part of the tools that are used in ensuring the -- that the federal money is wisely invested in this whole project?

MR. SWAIN: I'll give an answer to that. Certainly I think we do have effective controls. We do provide advice with respect to contract law and construction law. We implement many -- many major projects in the federal system and deal with deficiencies, minor or major, on the part of contractors.

In this particular case, I'd also point back to the responsibilities of the independent engineer. They're on the job and have been engaged to work for the

duration of the project to deal with such issues as ensuring that appropriate contracting is carried out. They have a requirement to review all tender documents and all design to make sure that there are effective mechanisms in place to protect the public monies that are being used on this project.

THE CHAIRPERSON: Thank you. Did you have one more ---

MS. HEARN: Can I ask it quickly?

THE CHAIRPERSON: --- very quick question, and then I need to ---

MS. HEARN: Okay. Given the reduction in the environmental funding and/or environmental projects in the federal budget and the treasury funding that is in place until 2007, will this reduction -- how will this reduction affect your project? Thank you.

MR. SWAIN: We have no reason to believe that any of the -- any of the decisions -- I guess with respect to the recent budget is the reference -- will have any impact on our funding that has been allocated for this project. As far as I referred to earlier, we have a Memorandum of Agreement that provides for a federal contribution of up to two hundred and eighty million dollars ($280,000,000) and that is what we expect to manage.

THE CHAIRPERSON: Is there anybody else from the public who has one question who hasn't asked one? Yes. And then I am going to call a brief break before our next presenter.

--- QUESTIONED BY MS. DEBBIE OUELETTE

MS. OUELETTE: Hi. My name is Debbie Ouelette, and I just heard you say that you don't think there's any migration coming off the Coke Ovens site and Tar Ponds. Is this true?

MR. SWAIN: I indicated that we would come back with some information in response to that issue.

MS. OUELETTE: Well if my memory corrects me, in September of 2001, they held a public meeting at Leisure Gardens, and their own employee for Transportation and Public Works stated -- and I'm pretty sure her name is Jason Bryson -- I'm not sure if I got the last name right -- that the same substance that was in the brook was the same substance that was in the Frederick Street homes. And this -- the brook that she was talking about would be the Frederick Street brook, and the homes that I'm talking about would be Frederick Street homes.

THE CHAIRPERSON: So perhaps you could take that input into consideration when you respond as you've undertaken to do so.

MR. SWAIN: I would just like to make a comment.

THE CHAIRPERSON: Sure.

MR. SWAIN: I believe she's referring to the Provincial Department of Transportation and Public Works, and we are with the Federal Department of Public Works and Government Services Canada.

THE CHAIRPERSON: Okay. Thank you for that clarification.

MS. OUELETTE: Yeah, I don't know who I'm referring to. I thought it was Public Works and Transportation and Public Service that said that. But I also have her on video stating that, so if you want that, I can provide it to you.

THE CHAIRPERSON: Thank you. I am going to cut off the questioning now. And I want to thank Public Works. As I said, we may need to come back with questions.

If the representatives of Fisheries and Oceans are here, you are scheduled to start at 11:00. I'm wondering if we can take a brief break, whether your timing will allow that.

Okay. We're going to take a 15-minute break, and then we will return at 11:15.

RECESS - 11:04 a.m.

RESUME - 11:20 a.m.

THE CHAIRPERSON: We'll resume. Before I turn to our next presenter, I'd just like to apologize to Public Works Canada. I don't think I thanked the presenters properly for their presentation and also for answering questions, so I pass those thanks on.

Our next presenters are from Fisheries and Oceans Canada.

--- (PRESENTATION BY DEPARTMENT OF FISHERIES AND OCEANS CANADA) CAROL ANN ROSE

MS. ROSE: Good morning. I'd like to first start off by introducing the representatives from Department of Fisheries and Oceans. Let's start with myself. I'm Carol Ann Rose, Acting Regional Director of Oceans and Habitat Branch, working with the Maritimes Region and based in Dartmouth, Nova Scotia.

I have with me -- and I'll go to my right -- Dr. Philip Yeats, Head of the Marine Chemistry Department with DFO, Maritimes Region. Dr. Yeats has extensive experience in marine contaminants including research in Sydney Harbour.

Next to Dr. Yeats is Mark MacLean. Mark is our Senior Environmental Analyst for environmental assessment in major projects, who has been coordinating DFO's involvement in the review of this project.

Next is Gus van Helvoort. Gus is the Area Director for Eastern Nova Scotia of Department of Fisheries and Oceans, Maritimes Region.

Next is Craig Hominick. Craig is the Area Habitat Coordinator for Eastern Nova Scotia.

And Henry Caracristi is our Senior Engineering Technologist with Diadromous Fish Division at BIO in Dartmouth.

I'd like to thank the Panel for providing DFO with the opportunity to participate in this review process. As a Federal Department with expert information related to Sydney Tar Ponds and Coke Ovens Remediation Project, DFO would like to take a few minutes to explain our overall mandate, our involvement in the review of this project, and identify a couple of issues that DFO would like to see addressed.

I will not be going into any detail on our comments provided during the review of the EIS during this presentation, but DFO staff will be available for any questions from the Panel or the public during the panel hearings.

DFO's overall mandate can be broken down into three main areas: sustainable fisheries and aquaculture, safe and accessible waterways, healthy and productive aquatic ecosystems.

Fisheries and Oceans Canada is a science-based department which uses research to develop Canada's aquatic resources in a sustainable way. DFO, through the Canadian Coast Guard, is helping to keep our waters safe and accessible for mariners and all Canadians.

For healthy and productive aquatic ecosystems, DFO is working to keep our oceans, lakes and rivers healthy, productive and sustainable through various programs such as Eastern Scotian Shelf Integrated Management Initiative, Bras d'Or Lakes Collaborative Environmental Planning Initiative, and Habitat Management Stewardship Framework.

We also work with partners to ensure strong and consistent environment rules and standards. For example, since 1978, responsibilities for the Fisheries Act have been shared between DFO and Environment Canada. DFO is responsible for provisions of the Act that protect fish, fish habitat and the management of fish, whereas Environment Canada is responsible for ensuring the prevention of polluting substances from entering waters frequented by fish.

Under DFO's mandate, there are a number of core activities administered by a number of branches within DFO. Oceans and Habitat Management Branch is responsible for the management of fish habitat,

environmental assessment, the Oceans Act, and Species at Risk Act. The Environmental Assessment and Major Projects Division of Oceans and Habitat Management Branch is the lead for DFO's involvement in the review of this project.

The Science Branch is involved in fisheries and ecosystem research, oceanography, international studies and technology transfer, and has been involved in the review of this EIS.

Fisheries and Aquaculture Management Branch is responsible for numerous Acts and Regulations including the Fisheries Act and its regulations and the enforcement of those pieces of legislation. Fisheries Management and Aquaculture Branch looks after management activities concerning commercial fisheries, recreational and aboriginal fisheries, as well as aquaculture in collaboration with the provinces.

The Coast Guard is in charge of navigational aids, search and rescue and Maritime security.

Canadian Hydrographic Services, which is a part of our Science Branch, does seabed mapping and hydrographic charts and publications of those charts.

Small Craft Harbours Branch works to keep federal harbours open and in good repair.

At this time, I'd like to hand the presentation over to Dr. Yeats to discuss DFO research relevant to this project.

DR. YEATS: Thank you. My name is Phil Yeats. I'm a Marine Chemist at the Bedford Institute and have been there working on contamination problems and contaminant research for more than 30 years, and I'm currently responsible for management of the Institute's Chemical Contaminants Program.

My job here is to take a few minutes and briefly review some of the recent research we have conducted in Sydney Harbour.

Beginning in 1999, DFO Science, in collaboration with scientists from Environment Canada, Trent University, Dalhousie University and the National Research Council, led a multi-disciplinary research program to assess the environmental effects of contaminants in Sydney Harbour.

This work was conducted to reassess the levels that resulted in closure of the lobster fishery in the early 1980s to identify other potential impacts of contaminants in the harbour and to generate data that could be used to develop monitoring tools to monitor possible detrimental effects on the harbour from remediation of the Tar Ponds site.

The information presented here is from the Toxic Substances Research Initiative Project No. 93, which is available on the Project Registry.

This work began with the collection of sediment samples, water samples and benthic macro fauna samples throughout Sydney Harbour, including both arms of the harbour and the area that's been referred to as the trunk. No samples were collected from the Tar Ponds themselves, which were considered outside the scope of this research.

Work that we did that should be relevant to this review includes the identification of chemicals of concern and their concentrations within Sydney Harbour water and sediments, the development of analytical methods to trace and predict the transfer and fate of multiple contaminants within the harbour, an assessment of the cumulative effects of toxic substances on the marine ecosystem, and an assessment of the natural remediation capacity of the sediments.

The work of DFO and our partners resulted in several tools which can be used to identify and monitor changes in Sydney Harbour. The research resulted in the production of maps for contaminant distributions and concentrations, maps of mensic diversity and microbial activity which can be used as baseline -- all

of which can be used as baseline data for monitoring of habitat recovery after remediation.

Through the sediment sampling, we were able to identify areas where the sediments exceeded regulatory quality -- environment quality guidelines or the CCME Guidelines that have been referred to several times, and through the analysis of sediment core samples, we were able to establish historical records of contaminant inputs such as PAHs, PCBs and metals.

Through a review of the physical oceanography and understanding of the chemistry of the sediments, a Contaminant Sediment Transport Model for PAHs in Sydney Harbour was developed.

Now the next three slides illustrate a few of these results. This is one of the maps that we have produced which show current levels of contaminants in Sydney Harbour. These can be used to establish baseline conditions prior to any remediation work and to help identify potential monitoring locations.

This map shows the levels of naphthalene, a polycyclic aromatic hydrocarbon, or a PAH, in Sydney Harbour's official sediments.

The CCME Guidelines for naphthalene is 34 micrograms per gram, so only -- the only part of this picture of the naphthalene concentrations that would be

above the guidelines is the area that shows up in red on this plot, so a fairly small area of the harbour that's actually above the guidelines.

We have similar maps for other PAHs, for PCBs, for lead and mercury and other metals, and they all show a -- qualitatively, a rather similar picture to this one for naphthalene.

This one is on the Historical Record of Contaminants. This picture of the historical records of contaminants was based on core samples from marine sediments collected in 1990 to 2001.

By taking a core of marine sediment and knowing the natural decay rates of some radio nucleis, we were able to determine the date when each level in the core was deposited. By determining the amounts of contaminants in each of the levels, we can identify what the concentrations of contaminants were at the periods that they were deposited.

This graph illustrates the build-up of contaminants that occurred at one of these cores in the central part of the harbour.

The plot has -- the plot, just to try to explain this a little bit, has concentrations of various contaminants on the vertical axis, and depth in the core -- surface of the core is on the left and the bottom of

the core on the right on the horizontal axis, but the depths in the core are not expressed as in centimetres deep in the core, but they're expressed as the dates at which the deposition occurred.

So what we can see here on this plot is that back in the -- round 1900 or before 1900, the concentrations at the bottom of the core were at background levels -- for something like PAH or a PCB, there was zero -- for metals, there was a small amount but it was in the natural background -- and that the concentrations increased throughout the 1900s to some sort of a maximum of about 20 years or so for virtually all of the contaminants.

And what's interesting to us here is that since about 1980 or so, there has been decreasing concentrations from those maximum concentrations up to the surface of the cores.

My final illustration of the kinds of results we picture is a -- is an output from our PAH model. Using our understanding of the currents and tides, this has allowed us to develop predictive models for PAH transport within the harbour and the movement of the PAHs out of the harbour.

This model needs a knowledge of the physics, the water circulation, it needs a knowledge of

the chemistry of the contaminant of interest, and it needs knowledge on inputs and concentrations at the individual sites, and it uses all of these to predict the distributions of these contaminants in the harbour.

This slide just show, for illustrative purposes, several manifestations of the model output that comes from this model, and it could be a useful tool in terms of assessing this situation and monitoring in the future.

So in summary, our studies have described the distributions of contaminants in the water and sediments, and with the observed decline in the level of contaminant concentrations in recently deposited sedimentary material, we now have -- see that the main inventory of contaminants resides at 10 to 30 centimetres deep in the sediments.

Further, these inventories continue to be buried at a rate of about .2 to 2 centimetres per year. So each year, this -- the most contaminated sediments get buried even deeper.

Also, we found that the Sydney Harbour sediments possess PAH degrading bacteria, as well as bacteria with a genetic potential to degrade PCBs. These will result in a natural degradation of the organic contaminants present in the harbour sediments. These two

factors result in a natural remediation of the sediments and a burial of the most contaminated sediments, and in general, some improvement in sediment quality as we proceed.

That's the end of my presentation. I'll now pass it back to Carol Ann to carry on.

MS. ROSE: Thank you, Phil. DFO has determined that an authorization under the Fisheries Act for harmful alteration, disruption or destruction of fish habitat is not required. The severely degraded environment of the Tar Ponds does not provide for fish and fish habitat which can support a fishery.

DFO, together with Environment Canada, has conducted research on the distribution and fate of contaminants in Sydney Harbour. This research has been made available to the Tar Ponds Agency, the Panel and the public.

DFO staff involved in this research have reviewed the EIS and provided comment. Other areas of DFO, such as Habitat Management, have also provided input on the importance of fish passage.

Given DFO's mandate and past experience in the area, we will offer assistance in developing and reviewing any required monitoring or follow-up for marine or fresh water environment.

The preventative works, namely, the Coke Ovens Brook Realignment and the main remediation project, should result in a restoration of damaged fresh water habitat which supports DFO policy objective to achieve a net gain of productive capacity of fish habitat.

Given our past research on contaminants in Sydney Harbour, DFO raised the need for monitoring of the harbour sediments to determine any impacts as well as effectiveness of any remediation efforts on the marine benthic habitat in the harbour. Questions were raised by DFO on the design of the Battery Point barrier and the main tar pond channel to ensure a fish passage could be maintained after the remediation was completed.

Given the current level of contaminants, the Panel may question the need for maintaining or improving fish passage through the Tar Ponds.

Upper areas of the watershed, including Wash Brook, have good fish habitat. Community groups such as the Atlantic Coastal Action Program, Cape Breton, have worked with community volunteers to install fish habitat enhancement structures in Wash Brook. To date, close to 30 habitat improvement structures have been installed as well as planting riparian vegetation on the Wash Brook.

As part of the Coke Ovens Brook

Realignment Project, the proponent has committed to creating new clean channels with suitable fish habitat structures. Not only will providing for fish movement and critical habitat be a step forward in restoring the local environment, but the presence and health of fish will be a valuable indicator for the overall health of the watershed.

As a result of our view of the EIS, DFO would like to see a commitment for monitoring of contaminants in the harbour to ensure that any potential increase of contaminants entering the harbour is not having a long-term negative impact on the marine benthic habitat.

The design of a monitoring program should arise from a risk assessment of contaminants entering the harbour as requested by Environment Canada in their comments to the Panel.

DFO would also like to be consulted during the design and construction of the new channels to ensure they provide for fish passage to more suitable areas in the upper reaches of the Wash and Coke Ovens Brook area. This involves more than just removing barriers, but ensuring that the channels are optimized to enable fish to migrate through the system.

DFO would also like to see the proponent

commit to monitoring fish abundance and health in the watershed. An understanding of long-term trends in the fish population will be a valuable indicator for the overall health of the aquatic system. Thank you.

--- QUESTIONED BY THE JOINT REVIEW PANEL

THE CHAIRPERSON: Thank you very much for your presentation. We are going to begin with questions from the Panel. If you've seen the schedule, the way we've organized things is that we will have questions, and we will break at 12:00 noon and we will come back at 1:00 and resume questions.

I just want to start off with two quick questions before turning this over to Dr. LaPierre. The first one is I'm just interested in the photograph of Wash Brook that you used in the presentation. Whereabouts is that in Sydney? Not where is Wash Brook, but where -- where -- those habitat improvements, who far up?

MR. MCLEAN: ACAP, Cape Breton, was involved in restoration in the upper areas. I guess it's down from -- I'm trying to remember the -- Mud Lake area. So just downstream of that area, there's a trail system that developed in a suburb area, and I could provide you with the map showing where the structures are if you'd like.

THE CHAIRPERSON: Yes, I would appreciate that, please. So we'll take that as an undertaking that you're going to provide [u] a map showing ACAP fish habitat structures and improvements on Wash Brook. Okay. Thank you.

My second question for Dr. Yeats was if you could -- you indicated that there are two processes going on with respect to existing contaminants in Sydney Harbour, one being a capping with cleaner sediments, and the second being the microbial action. Is there a point at which the two start to work against each other, that sufficient depth of new cleaner sediments inhibits microbial action?

DR. YEATS: I don't have the actual answer for that, but it would seem logical that that would happen. As you get deeper in the sediments, they get -- they will eventually get below the area of biological activity in general, and so the process would tend to wind down. But by such a time, they would be quite deep in the sediment and probably out of any biological availability, so it may become a moot point that the biological activity winds down, because it only winds down in sediments that are so deep, there's no biological availability anyway.

But in theory, it should occur like you

say. It would wind down as you got the sediments -- deeper into the sediments.

THE CHAIRPERSON: Are you able to predict forward, if there are no other contamination sources re-contaminating the harbour, at what point the harbour will become -- or the lobsters will be clean again?

DR. YEATS: I think the only safe way to project that forward would not be to try to make a prediction but to predict a general trend, which I think we can do, that the general trend would be in a direction of improvement and then to decide on when you would re-open the lobster fishery by monitoring the levels of contaminants in the lobster. I think that's the only safe way to do that, and I would think that would be an intelligent thing for somebody to undertake into the future.

THE CHAIRPERSON: Are we talking decades? Centuries? Less than centuries.

DR. YEATS: Definitely less than centuries. It might be as much as decades.

THE CHAIRPERSON: All right. Thank you.

MR. MCLEAN: Just a follow-up to that. I don't have all the information, but there has been -- between lobster samplings done in the early 1980s and mid 1990s, Environment Canada did show a reduction in PAH

contaminant load in lobsters. These were very small sample sizes, so the significance of it is questionable, but it may be a question -- if you're concerned about decreasing trends in PAHs in lobsters, I think Environment Canada may have some more information on that.

DR. LAPIERRE: Good morning and thank you. I would like -- I was pleased to hear that you're going to be involved with the design of the water brook that's going to move the water from the site.

I do have some concerns with the construction of that brook, and one of them is, normally engineered structures tend to be linear and they're quite different from natural brooks, which meander. And my concern rests with the bioenergetics of fish that have to undertake migrations, particularly in the springtime when you might have a full brook or that channel could be fully loaded with water.

Now, I would -- have you looked at the species of fish and done any calculations on the bioenergetic aspects of these fish and what would consider a natural barrier to stop them from moving upstream even if you have a channel well designed and in place?

MR. MCLEAN: I'll ask Craig Hominick to

give a little bit more information, but right off the top, we don't have details with regards to flows and fish energetics. It's something that we work with on a regular basis when we're designing fish passage structures, so that it's detailed information we have.

So we would be working with the proponent, but maybe I can pass it over to Craig for a little bit more information.

MR. HOMINICK: Thanks. Yeah, with the proper design and construction of the channel, we should be able to provide for fish passage on that site. It's a fairly low-gradient site, so as far as gradient goes, it's -- it's one parameter of a fish passage you have to look at, and it does have sufficient gradient.

The use of a deeper center channel within the wider channel also is, I think, a feature that we'll be looking for so that during the periods of low flow, you will concentrate that water towards the center bottom of the channel to provide for adequate depths.

It's also important to note that natural stream systems do experience periods of extremely low flows, which can impede fish passage, but these typically occur outside the migration periods, which would be primarily during the spring and fall. So in the drier months, July and August, when flows are quite low, fish

aren't typically moving then anyways.

As for your question about the higher than normal flow rates during the springtime, these also occur in natural systems, and migrating fish tend to hold up at the mouth of systems and wait for the flow rates to subside to more suitable levels before moving upstream.

As you talked about engineered channels and their design, you're right, I've seen lots of channels designed like a ditch, but I've also seen a lot of fish-suitable channels designed where they can work in the design with the meander. There's a lot of engineering expertise within our department that looks at how to design channels so that they will have the natural bend and movement to them.

In reviewing any type of channel, we do often -- or we do look at -- we work with the proponent to ensure that those concerns are addressed and that the design will be carefully considered when we're looking at migratory species and anticipated flow rates throughout the year.

And you also asked a question about fish bioenergetics. And I don't know, Henry, if you want to just give a small talk about what the department does have in terms of data on the fish species that would use that system.

MR. CARACRISTI: Okay. In most of our work that we've designed in this area, most of the streams and rivers, we design for, let's say, smelt, gaspereau salmon, eel ---

THE CHAIRPERSON: Could you get a little closer to the microphone or ---

MR. CARACRISTI: We've designed for various migratory fish species like smelt, gaspereau, salmon and eels. And this would fit fairly good with this system. Most of our work is done on existing established rivers and steams. Since this one hasn't seen a fish in, I don't know, a century, it could be -- anything we do is going to be just a benefit to try to bring it back. The fish passage design is not -- should be fairly easy to incorporate into this project. It shouldn't be a problem at all.

DR. LAPIERRE: I guess the issue of a limited water flow was a concern of mine also, but I think you've addressed it.

There is another concern that as I look at the design that's being contemplated, there seems to be a drainage system from the monolith that will bring water to the channel, and in the eventuality that this water might have contaminants, will you be responsible for ensuring the quality of that water?

MR. MCLEAN: First, I guess, it's my understanding that that water would be examined before released. But when it comes to issues of deletery substances entering water frequented by fish, that's Environment Canada's mandate. We deal mainly with sort of the physical habitat, but chemical impacts, Environment Canada has a regulatory authority under the Fisheries Act to deal with that.

DR. LAPIERRE: Okay. Thank you. I realize that Environment Canada has responsible pollution prevention provisions under the Fisheries Act. Regardless, I will ask you this question as your department mandate does include healthy productive aquatic ecosystems.

Apparently the ecological risk assessment for the Coke Ovens site has not identified contaminant ground water as a significant risk for aquatic life. Is that your understanding, and if so, are you in agreement?

MR. MCLEAN: Again, we didn't look closely at sort of the impact of chemical contaminants in the fresh water. That being Environment Canada's mandate, we mainly, in the fresh water systems, focused on the physical environment.

We did provide a review on the chemical constituents in the harbour given our cooperative

research with Environment Canada. So I certainly couldn't comment on contaminant levels and their impacts on aquatic species.

DR. LAPIERRE: Okay. Your written submission in PC-29 indicates that:

"DFO considers the larger remediation project as an improvement for fish habitat that should result in a net gain of fish habitat."

And you did address some of those issues. How is this possible when there is such a large loss of habitat with these two ponds?

MR. MCLEAN: What DFO considers is we look at the habitat, the value of the habitat to the fish species that are present.

With the Tar Ponds, we know there are fish present in there. They tend to be resident species. The population has been shown not to be particularly healthy. What we look at as the tradeoff is that large amount of what we consider unsuitable habitat being lost is being replaced with a considerable amount of fresh water moving habitat, which should be clean, at least from a sort of substrate point of view, which would provide a considerably higher value for habitat component.

And in addition to not only the Coke Ovens

Brook remediation, but removing the Ferry Street weir and opening up the areas of the Wash Brook, which could, we hope, eventually sort of lead to fish passages there.

So when we look at the actual habitat value and components, we consider it a net gain of fish habitat even though you're looking at a loss of -- I don't have the numbers with me, but as far as sort of value, it's not weighed on a sort of one-to-one basis as far as square meter to square meter. We look at the actual physical habitat and the value of that. So the upstream areas would have a much higher value before weiring habitat, feed, and spawning habitat potentially down the road.

DR. LAPIERRE: So you're hoping to trade off quality versus quantity.

MR. MCLEAN: Yeah, it's -- it's typical sort of with DFO if we take, say, an example of removal of dam systems, DFO typically doesn't require Fisheries Act authorization for the removal of a dam. In those cases, though, when a dam is removed, we have the loss of headwater pond, which is, you know, fish habitat, but what we trade off, which is what we see as a net gain, is all the upstream migration through the system once the dam is removed.

DR. LAPIERRE: I guess one more question.

Your recommendations include provisions for monitoring of contaminants in the harbour sediments and implementing -- and implement mitigation if required. Your concern here is the release of sediments, I would consider, from the Tar Ponds during the period of active remediation. Is this correct?

MR. YEATS: That would definitely be one major concern, that during the process of doing this project they've already predicted that levels of contaminants would temporarily increase, and so we'd be concerned about what impact those increased levels of contaminants during the conduct of the project -- what they'd have on the harbour.

So, we agree with Environment Canada on this that some additional assessment, risk assessment of what those risks would be, identification of what monitoring targets should be and then a monitoring program is something that's really important.

DR. LAPIERRE: I guess my concern is the practicality of monitoring contaminants in harbour sediments to assess the need for mitigation. Do you have any idea how you're going to do that?

MR. YEATS: It's the monitoring of contaminants that would get to the sediments and harm the [--]. You may monitor it by monitoring the levels in the

water or you may monitor the biological effects of some biological effect measurements. You may not actually measure the levels as part of the monitoring program, but that would come from the risk assessment and the design of the monitoring.

If it was found that there was a substantial input of contaminants and it was causing some problems, I would think that the approach would be to figure out how the project could be modified in order to reduce the input rather than trying to mitigate after it gets into the sediments.

DR. LAPIERRE: I guess that was one of -- my fine point in this question. But the question -- are you concerned with resedimentation, tidal action waves that might take place and ---

MR. YEATS: Well, that is a factor that occurs, but the observations we have from our dated sediment course is that those sediments are not being remobilized to any real extent. If they were being remobilized, we wouldn't see the good dating of the sediments.

So, those sediments are quite stable, quite -- you know, they aren't being pushed around by the tides to any extent, so it doesn't look like there's a lot of that kind of physical remobilization going on.

DR. LAPIERRE: I guess I concur with your previous comment that it would be maybe more effective to take a pollution prevention approach and focus on minimizing the release of sediments from the pond to the harbour as an initial step.

And I guess my question will be, is that something you're contemplating that should be done?

MR. YEATS: That's not my ---

MR. MCLEAN: Basically what we're looking at for the risk assessment and the monitoring is to verify the Proponent's predictions that there will be no effects on the harbour from contaminants being released.

If we do find that contaminants as part of that monitoring program are entering the harbour, then we'd work with our partner, particular Environment Canada, in looking at potential mitigation with the Proponent determining what was required for mitigation.

DR. LAPIERRE: But wouldn't you anticipate chemicals entering during the disturbance phases?

MR. MCLEAN: That's what understand the Proponent has predicted. I think they use the conservative fivefold increase and actually show that some of the chemicals of concern could have a negative impact on the harbour.

What we wanted was them to take the extra

step, if they are identifying a negative effect on the harbour, to identify what those receptors are and develop a monitoring program out of that.

DR. LAPIERRE: So, will you be requiring that before the project is initiated?

MR. MCLEAN: That's what we're requesting. We're only a federal authority in this case, so we don't have any regulatory authority over the project. So, as an expert department -- and we've worked with Environment Canada on this issue, and I think Environment Canada as well as Natural Resources Canada have agreed that this is what we'd like to see carried through for this project.

DR. LAPIERRE: So, you rely on Environment Canada to enforce your ---

MR. MCLEAN: Well, we often work together on -- as we have with the research, on issues of monitoring, evaluating monitoring programs, particularly when we have, you know, dual interests in things like marine environment where we typically deal with the physical environment and also some of the research we have, and Environment Canada has more of the regulatory mandate for contaminants entering waters frequented by fish.

DR. LAPIERRE: Okay. Thank you.

MR. CHARLES: I only have one question.

In your presentation, slide presentation, on page 4 there's a "Summary" and then "Recommendations." And this question comes from a non-technical person, so you may think it pretty simple or stupid but overlook that and try to answer it anyhow.

Under the summary you say:

"The efficiency of proposed containment measures is unclear."

And in your recommendations you suggest that the Proponent should:

"...clarify the extent of sediment disturbance and efficiency of control measures."

And I guess my question is, how would the Proponent do that? Would he do that via modelling, or would you expect some kind of actual performance data, or how would it be done?

MR. MCLEAN: I'm sorry, I'm not sure I understand. Which page are you referring to, our presentation or the ---

MR. CHARLES: On page 4, under the -- there's two boxes there, one is entitled "Summary" and then the other one is "Recommendations" to the -- it's part of the presentation to the Joint Review Panel.

MR. MCLEAN: Oh, sorry, the ---

MR. CHARLES: Oh, I'm sorry, I'm in the wrong one. Well, I apologize for that, but you can answer it if you want.

MR. MCLEAN: I think we'd like to refer that to someone else.

MR. CHARLES: Thanks.

THE CHAIRPERSON: I just have a couple of very quick questions. The first one, though, is if new habitat is created in the new channel going through the Tar Ponds by this project -- and you've explained [--] farther up the watershed -- well, does that not leave a section of Wash Brook that -- well, what is the situation of that section of Wash Brook actually leading out of the Tar Ponds?

Now, I don't know in my perambulations around Sydney if I've been -- I thought I was looking at Wash Brook. That's a channel with gabion sides and that's -- that is it, isn't it?

Can you perhaps comment on the quality of that piece of habitat and whether, in fact, for overall watershed improvement there needs to be something done about that and whose responsibility might that be?

MR. MCLEAN: Yes, certainly we agree that there's sections of the Wash Brook between the Tar Ponds and some of the upper reaches which we illustrated in our

picture which could impede fish passage and is not providing suitable habitat.

What we do through our habitat stewardship program is work with community groups to look at restoring those areas so we can eventually open up all of Wash Brook and have it suitable. So, I think this is sort of an ongoing process that we're working with the community to improve the overall watershed system.

THE CHAIRPERSON: And is there a hope or an intent that that could happen sort of in sync with the Tar Ponds construction project?

MR. MCLEAN: I think that would depend on a number of issues, such as priority of the project within the community, available funding for it. That's certainly something we'd like to work with both the Tar Ponds Agency and also the community groups that would be doing restoration as opening up this as a system that could support fish migration.

THE CHAIRPERSON: Thank you. And during the presentation there was -- if I wrote it down correctly, there was a suggestion or a recommendation that the Tar Ponds Agency would be involved, could carry out some monitoring in the upper areas of the watershed. Was that correct? Was that made as a suggestion?

MR. MCLEAN: Yes, we'd like to see

monitoring of fish abundance and health as an indicator of the overall health of the aquatic system, so we have new channels for the Coke Ovens Brook.

Those brooks, albeit very poor populations of fish in not good health but did support fish populations, we'd like to see those -- what's happening with those over time. So, this would be a long-term monitoring commitment.

THE CHAIRPERSON: And would the monitoring be confined to the areas of the watersheds that are within the project boundaries or farther up?

MR. MCLEAN: We don't have those details right now. I mean, our focus first is the realignment of the Coke Ovens Brook, that being on the project site, because that's where the main Coke Ovens Brook realignment took place, and we were involved heavily with that project.

As far as monitoring upstream, say in the Wash Brook, that would be something that we could work with the Proponent on to determine if we can include that in the project component.

THE CHAIRPERSON: Okay. Thank you very much.

I've got one piece of housekeeping I need to carry out before we break. We're going to break for

one hour for lunch and then we'll come back and then we will resume and we will open up questioning to other parties.

My one piece of housekeeping is that I have a request here, a written request from Public Works and Government Services Canada, and it's a point of -- a question of clarification. And I wonder if the representative of Sierra Club could come forward to the mike.

So, we'd need something clarified in order for them to fulfil the undertaking that they made. If I can just ask you the question and perhaps you could clarify it.

The question was that the representative of Sierra Club referred to the Environmental Impact Statement and its identification that there is off-site migration from the sites to nearby residential areas, and they would just appreciate if you could provide the specific reference in the EIS so that they can have that when they develop their response. Are you able to do that?

MR. MARCOCCHIO: Not at the moment but I certainly will.

THE CHAIRPERSON: Could you do that after -- when we return after lunch?

MR. MARCOCCHIO: I will try, and if not I'll be able to indicate when. I'll do it as soon as possible.

THE CHAIRPERSON: Thank you very much. So, it is now 12 o'clock, and we will resume again at 1 o'clock. Thank you.

--- Upon recessing at 12:04 p.m.

--- Upon resuming at 1:04 p.m.

THE CHAIRPERSON: Good afternoon. We will resume the session. Just to clarify what we're doing this afternoon, we had our presentation from Fisheries and Oceans Canada this morning before lunch and the Panel asked their questions, so we're now going to move and open the questioning to other parties.

Following that -- there'll probably be a break in there somewhere, I'm not quite sure depending on the timing. Following that we are going to move to the presentation and questioning with relation to Natural Resources Canada, and then before we conclude the session I'm going to ask Public Works and Government Services Canada -- I don't know, am I seeing anybody in the room? Anyway, I'm going to ask, as they had indicated, if they would come back.

The Panel has a few more questions that they'd like to put to them and then I propose to open the

questioning again to the public for just one more round of questioning, because I know there is interest in asking some additional questions.

Is there anybody here from Public -- yes, good. So, the message is -- that's all right. So, please don't leave just yet.

MR. MCLEAN: Madam Chair, if I can just point out, Carol Ann Rose unfortunately had to catch a flight back to Halifax, so she won't be with us this afternoon.

THE CHAIRPERSON: Thank you. So, now I'd like to open the questioning, and turning first to the Proponent, the Sydney Tar Ponds Agency, do you have any questions for Fisheries and Oceans?

MR. POTTER: I think I'll use my mike. Yes, we do have one question. I'd ask Dr. Stephenson, who did the ecological risk assessment work for us, to address it, please.

DR. STEPHENSON: Madam Chair, following up on a question from Dr. LaPierre regarding monitoring in the marine environment during construction in the Tar Ponds, the Proponents believe that monitoring of water will provide a more rapid and effective measure that can be used to identify the need to modify projects operations than monitoring sediment could.

The DFO response to Dr. LaPierre seemed to indicate that they agree with this. We would like to know whether they can confirm that.

MR. YEATS: I think we would agree that a sediment is not the way, so water it could be, or it could be monitoring some biological process or biological species but not sediments.

MR. MCLEAN: Just to add on that as well, we're looking at doing -- have a risk assessment done -- this is one of our requests -- along with Environment Canada and NRCAN, and this risk assessment would actually inform the parameters that we want monitored in the marine environment, be it water receptors such as different organisms, or sediment.

DR. STEPHENSON: Thank you, Madam Chair.

DR. LAPIERRE: If the risk assessment identified no parameters that were at risk, then there would be no need to monitor?

MR. MCLEAN: I think that's something we'd have to look at at the time and discuss with our colleagues at Environment Canada.

THE CHAIRPERSON: If there are no more questions from the Tar Ponds Agency, I would like to go through my roster again. Anybody else from the Federal Government, Provincial Government or Municipal Government

with questions for Fisheries and Oceans? Any questions from Save Our Health Care Committee? So, one question and a follow-up, please, this round.

MS. MACLELLAN: Is this the mike? Okay.

Having lived by the ocean most of my life within walking distance and observing the tides and the storm surges, I have a question about the monologue. I think that's the right name for the ---

THE CHAIRPERSON: The monolith?

MS. MACLELLAN: Monolith, okay.

THE CHAIRPERSON: The monolith, yeah.

MS. MACLELLAN: And they did say there would be a seawall built to protect the tides from coming in. I'm not entirely sure how high this seawall would be, but I'm wondering what effect of erosion the tides and the heavy storm surges would have on this seawall.

Given the fact that we've had more storms in the last few years and higher storm surges -- indeed even part of the causeway was washed out -- how would this impact -- how would heavy storm surges impact it?

I've been out in the harbour just last fall for a couple of days on a boat when the metres were five -- when the waves were five metres high and we couldn't get in or out.

MR. MCLEAN: I'm not sure if DFO is the

correct department to respond to that. With regards to, you know, oceanographic conditions, you know, we have some monitoring, but I think as far as climatic conditions and changes and effects of the environment on the project, I think I'd have to defer that to Environment Canada.

MS. MACLELLAN: Okay, I'll defer that question then to Environment Canada when they do their presentation.

But you talked about the PAHs in the harbour. They were monitored, I believe, first in the '80s and then in the early '90s, and I'm not sure of the amounts of PAHs that are left there now, but in the '90s when they monitored them they were higher than they were in the '80s. Is there a technology today to bioremediate PAHs with bacteria, marine bacteria?

MR. YEATS: Ma'am, our studies show that naturally occurring marine bacteria have the capacity and do degrade PAHs. It might take a long time for them to naturally degrade the PAH levels that are in the harbour sediments down to very low levels, but they do do some degradation, so the trend would be in the right direction. So, I don't know about the magnitude of the degradation but it would occur.

The sort of implied observation about the

levels changing from the studies in the '80s or so to the present time, I think it's actually better seen from that dated sediment core data where it clearly does show that the concentrations in the sediments were highest in the 1970s/1980s and are considerably lower now. So, I think that's the definitive data on the trend with time.

MS. MACLELLAN: Could you provide us a comparison of the PAHs like from '70 right through to present?

MR. YEATS: I can't provide it right now, but we have sediment core data from several dozen sites in the harbour that have been dated and a sort of a picture of the concentrations at dates that you choose could be generated, so we could make a horizon of what the concentration looked like in -- pick your date -- 1985 or whatever you pick and then for 1999, which is when we collected our samples. We could do that.

THE CHAIRPERSON: Yes. What would be -- can you perhaps tell me what it is that you particularly would like to focus in on and then we'll see if we -- if the Panel agrees and would like to ask for that as an undertaking.

MS. MACLELLAN: I'm particularly interested in the lobster fishery industry and the lobsters in the harbour. There's a lobster fishery just

down below the harbour in South Bar and to my knowledge tides carry things out. And where are these PAHs going?

THE CHAIRPERSON: Dr. Yeats is referring to your data about PAHs in the sediments, I presume, not in the lobsters?

MR. YEATS: I was referring to sediment data, yeah.

THE CHAIRPERSON: Yes.

MR. YEATS: I misunderstood the question if she's asking about ---

THE CHAIRPERSON: Are you asking for information about PAHs in lobster over time?

MS. MACLELLAN: I'm asking about the PAHs in the harbour over time and compared -- and like I want to know if they migrated from the harbour farther on down the coast.

THE CHAIRPERSON: And how -- with this information, how do you wish to relate this information to the assessment of this project?

MS. MACLELLAN: Well, I'm wondering if they have checked the lobsters lately along the coast to see if there's any PAHs in them.

THE CHAIRPERSON: If it's -- would you be able to provide a summary of information about PAHs in lobster at some distance from -- in the harbour and some

distance from the harbour?

MR. MCLEAN: My understanding from the most recent lobster information that was collected by Environment Canada, I believe the report date is 1999, it is on the public registry for this project along with the TSRI Project No. 93 which shows PAH levels in sediments and shows distribution in the harbour including south, north arm, groin and the trunk of the harbour, and that's also on the registry site.

THE CHAIRPERSON: Okay. Thank you very much. Thank you, Ms. MacLellan.

MS. MACLELLAN: Thank you.

DR. LAPIERRE: Would it be possible to give a brief explanation as to the degradation pathways of PAHs in the marine ecosystem and the -- are there any toxicity associated with the degradation process?

MR. YEATS: I'm sorry, I didn't -- I missed a little bit ---

DR. LAPIERRE: What do PAHs -- you indicated that they disappear with time. I guess my question is -- you said they could -- microbial activities. Now, what do PAHs degrade to before they get down to the basic atoms which they're composed of?

MR. YEATS: Yeah, PAHs are rather complicated organic molecules and the degradation

products -- or the degradation would proceed in several steps, and initially the initial products may be also harmful, but they will -- the degradation process will start to break these aromatic rings, which are what generates the toxicity.

So, they don't get degraded down to molecules but they get degraded down to fairly simple organic compounds and they will degrade down to compounds that have less toxicity or no toxicity.

DR. LAPIERRE: So, as they degrade down to the atom level they become less and less toxic?

MR. YEATS: That would be a general trend, yeah, but they don't get down to the atom level, they get down to simpler organic molecules, but generally speaking the simpler organic molecules have lower toxicity. It's the complicated, multi-ring polyaromatic hydrocarbons that have -- it's the complexity that generates the toxicity. So, it's not a perfectly linear process but it does tend to degrade them down to less toxic chemicals.

DR. LAPIERRE: But in general it goes to a less toxic state?

MR. YEATS: Yes. Yeah.

THE CHAIRPERSON: All right. I'm going to move on down the roster. Let me just say for anyone who wasn't here this morning that the order of questioning,

we go through the registered participants, people who have registered to speak at the hearings first, and then I open up to questions from other people.

If you are a registered participant and you've only arrived at the hearings this afternoon, then perhaps make yourself known to a member of the secretariat so that I can add you in, get you in the right place on this roster.

So, Mr. Marmon, do you have any questions? No, you don't. That takes us to Sierra Club.

MR. MARCOCCHIO: Thank you, Madam Chair. Will we be following the same process as this morning, one question and a brief follow-up or ---

THE CHAIRPERSON: Yes, and I will do that in rounds till we move on.

MR. MARCOCCHIO: Thank you. I noted with interest the questions the Department of Fisheries and Oceans submitted to the Proponent about the permeability of the Cofferdam, the restriction of fish migration and the effect of a barrier in preventing the migration of contaminants into the harbour.

The response to your questions indicated that, in fact, there will be no barrier at the mouth of the harbour, that, if I'm not mistaken, there will be a 50-metre opening, unrestricted opening, that will both

provide access for fish migration but will also not prevent any migration of materials from the channel of moving into Sydney Harbour.

So, given that this barrier is no longer being constructed at the mouth of the Tar Ponds draining into the harbour, can you please provide the Panel what assurances you have that the contamination will not continue to flow into the harbour and that it may actually increase during any type of remedial activities in the Tar Ponds, and, in particular, the possibility of a failure of the stabilization to prevent leaching of further material in the harbour.

I mention that because I noticed that your data there went as far as 2001 but it did not seem to include the Lee study that showed that the last testing in Sydney Harbour, in fact, showed a dramatic spike and increase in the contaminants in the harbour that that Lee paper thought was a result of the disturbance during the previous failed remediation attempt.

So, the first point is, can you confirm for the Panel that, in fact, as a result of the failed remediation attempt there was indeed a slug, a surge of all of the contaminants at the mouth of the harbour that resulted.

And then, secondly, the second part of

that question was, what assurances do you have that a similar process, particularly with what we heard this morning, will not occur during the remediation phases? And then I have a follow-up.

MR. MCLEAN: Madam Chair, I just wonder if that clarification -- that the data that's being referred to with regards to the presumed failure of the previous attempt is in the TSRI document.

THE CHAIRPERSON: The TSRI document?

MR. MCLEAN: Yeah. Sorry, TSRI-93, the document -- Ken Lee, 2002.

THE CHAIRPERSON: Could you clarify where your -- the source of your information with respect to the spike, and spike in what? What is that document you're referring to, please?

MR. MARCOCCHIO: TSRI-92, does that refer to the -- does "92" refer to the date? Because it can't be that document. It was a document that was published around 2002 or 2003, I believe.

MR. MCLEAN: That's correct. Ken Lee is the main editor.

MR. MARCOCCHIO: Yes.

MR. MCLEAN: I'm referring to the -- it's a Toxic Research Substance Initiative No. 93. It's just the number on the document.

MR. MARCOCCHIO: Yes.

MR. MCLEAN: So, is this the document that, I guess, we're pulling the data from?

THE CHAIRPERSON: This is the document you're referring to?

MR. MARCOCCHIO: Yes, it is.

THE CHAIRPERSON: And you're saying that in that document -- that document indicates some kind of a spike in contaminant levels in what?

MR. MARCOCCHIO: In the harbour sediments and in the benthic organisms that were tested that are attributed to remediation activities, previous remediation activities.

MR. MCLEAN: I'm afraid we don't have the answer for that right now. We'll have to review the document and provide a response to that at a later date, if that's okay with the Panel.

THE CHAIRPERSON: Is that document on the public registry?

MR. MCLEAN: Yes, it is.

THE CHAIRPERSON: So, you're making an undertaking to respond to that? [u]

MR. MCLEAN: Yes.

THE CHAIRPERSON: So, for the record, that is that you're going to check the TSRI ---

MR. MCLEAN: 93.

THE CHAIRPERSON: --- 93 with respect to what it shows in terms of spike of contaminants in harbour sediments. And then you will also respond to the second part of the question, which is the likelihood of something similar occurring during the project under assessment?

MR. MCLEAN: That's correct.

THE CHAIRPERSON: Thank you. And did you have a quick follow-up? And then we'll go to the next question.

MR. MARCOCCHIO: Well, yes, that raises a point. If it is on the public record, can DFO indicate why it was not included in the historic data contamination levels that were presented to us this morning? Was it an oversight?

MR. MCLEAN: I'm sorry, Madam Chair, I missed the first part of that question.

MR. MARCOCCHIO: If that document is on the public record, I wonder why it was not reflected in your documentation of the historic contamination in the harbour from 1900 through to 2001. Why did it stop there and not include this document that's on the public record?

MR. MCLEAN: Again, we'd have to go back

and refer to that document and check, and we will provide a written response to that question.

MR. MARCOCCHIO: My first ---

THE CHAIRPERSON: Okay. Thank you. I believe -- I think we've had the question and we've had the follow-up question and we have an undertaking to answer that.

MR. MARCOCCHIO: But my question hasn't -- my first question hasn't been responded to.

And that is, what assurances do you have that this contamination will not flow into the harbour and may actually increase during any remedial activities, and, in particular, the possibility of a failure of the stabilization to prevent leaching of further material into the harbour?

That was the main thrust of the question and I'm glad that we've cleared up the confusion around the document that is on the public record that you did not refer to, but I would appreciate a response to that question.

MR. MCLEAN: Sure. When we first raised the issue regarding the -- what was then the Cofferdam, is now the Barrier Point -- or the Battery Point Barrier, sorry, our main focus at that time was to ensure for fish passage to the fresh water system.

However, given our research in the harbour with contaminants and the previous work we've done, we met with Environment Canada who has the lead for deleterious substances entering water frequented by fish, and together with Environment Canada we -- and, sorry, as well as Natural Resources Canada -- have agreed to ask the Proponent to develop a risk assessment in the marine environment to identify if contaminants are entering as the result of the remediation project, what are the possible receptors, and then to identify a short-term and long-term monitoring program based on those receptors that would identify if contaminants are entering the harbour as a result of this project.

THE CHAIRPERSON: Thank you. Thank you very much, Mr. Marcocchio. Can I go to our next questioner, please? Do we have -- is Mr. Ignasiak -- do you have a question?

MR. IGNASIAK: I wonder whether the Fisheries and Oceans are aware of the fact that [--] basic environment that would be created as a result of application of solidification/stabilization of the Tar Ponds sediment will result in conversion of phenols, which are generally non-soluble in water, into sodium phenolates, which are very soluble in water and, therefore, will contribute to further contamination of

ground water and surface water.

MR. MCLEAN: I feel badly for picking on my colleagues at Environment Canada, but with regard to deleterious substances entering waters frequented by fish, I'd have to refer that to Environment Canada.

THE CHAIRPERSON: Thank you. Mr. Ignasiak, I would -- if you would like to ask that question of Environment Canada when they are presenting. Thank you.

Are there any questions from members of the public who are not registered participants? I have Ms. Ouelette and then I have Mr. Brophy at the back.

MS. OUELETTE: The Department of Fisheries and Oceans, why are they allowing the owners of the Coke Ovens and Tar Ponds who polluted our fish and the waters of Sydney Harbour daily and for years -- why are they not being charged with heavy fines for doing so?

MR. MCLEAN: Again, Section 36 of the Fisheries Act which prevents the -- or regulates the deleterious substances in waters frequented by fish is under the mandate of Environment Canada, so they're the regulatory agency that would be best to respond to that question.

MS. OUELETTE: Well, aren't you the Department of Fisheries?

MR. MCLEAN: Yes, we are the Department of Fisheries and we have a very clear mandate under the Fisheries Act which deals primarily with fish and fish passage, but as referred to in our presentation, since 1978 Environment Canada has held the mandate for Section 36 of the Fisheries Act which deals with deleterious substances.

MS. OUELETTE: My concern are the fish are coming back with tumours, they are very sick according to what they said here this morning, and yet the polluters, which are the Coke Ovens and Tar Ponds, the owners, are not being charged for doing so. Why?

If I had an oil tank on my property and it leaked into your property, Environment Canada would be on my back big time because I polluted your property. So, why -- right?

THE CHAIRPERSON: Well, thank you, but you're asking questions -- or we are now entertaining questions of Fisheries and Oceans, they have provided what I think to be a perfectly adequate explanation about why they cannot provide you directly with an answer to that question and it needs to be directed somewhere else. So, thank you.

MS. OUELETTE: Well, my -- just my concern was the fish are being polluted and they are coming back

with tumours. Like who do we ask? Like that's why I asked the question, too.

THE CHAIRPERSON: I think a clear answer has been given, that that question needs to go to Environment Canada.

MS. OUELETTE: Okay. Thank you.

THE CHAIRPERSON: Thank you. Just for the sake of the recordkeeping, though I think they're doing a fine job, I will remind you that -- before you speak if you could just identify yourself. It's easier for the people doing the -- making the transcripts.

MR. BROPHY: My name is Eric Brophy, and good afternoon, Panel.

In the Memorandum of Agreement I find the following:

> "The federally and provincially owned portions of the South and North Ponds of Muggah Creek to Battery Point..."

My question is, is there a clear defining line in the Tar Ponds defining which is federally owned and which is provincially owned? And I raise that question in relation to the PCB concern that's under the slag heaps.

MR. MCLEAN: I'm not sure if Fisheries and Oceans has any information with regards to land ownership

at the site. I think that's probably -- I'm not sure if that's a better answer for the Proponent or Public Works.

THE CHAIRPERSON: I will just put that question, if you don't mind, to the Tar Ponds Agency if you have an answer to that question.

MR. POTTER: There is a clear demarcation between the federal and provincial land into the water lot of the North and South Pond, which essentially is about 70 percent federal water lot and 30 percent provincial water lot based on the existing shoreline on the east and west shorelines.

THE CHAIRPERSON: Yes, Mr. Brophy, do you have a follow-up question for Fisheries and Oceans, please?

MR. BROPHY: Yes. Can that be made available to myself? I would like to see a diagram of that.

THE CHAIRPERSON: Well, I guess that's a question again back to the Agency, if they don't mind entertaining that. Is that something that you can provide?

MR. POTTER: Certainly we'll find an appropriate drawing.

THE CHAIRPERSON: So, an undertaking to provide a drawing that shows that demarcation line. [u]

Thank you very much, Mr. Brophy.

MR. BROPHY: Thank you very much, Madam Chair.

THE CHAIRPERSON: Is there anybody else from the public who's not a registered presenter who'd like to ask a question of Fisheries and Oceans? If not, I would ask -- we'll have a second round of other parties.

I'm assuming we still don't have anyone from a government perspective who wants to ask a question, so I will ask for a second round of questions from registered participants. So, again, the Save Our Health Care Committee, do you have another question?

MS. MACLELLAN: My next question concerns the fish in Kilkenny Lake. We heard in the process of these presentations that according to atmospheric conditions that there will be days when there will be some pollution coming out of the incinerator.

When particulate matter comes out of the stacks on those days there's a possibility with the wind variance that it could fall on Kilkenny Lake. What effect will this have on the fish?

MR. MCLEAN: I understand, I mean, the fact that we are Fisheries and Oceans that a lot of the questions regarding contaminants in water would come to

us, but I have to go back to our mandated area of responsibility, which under the Fisheries Act we do not deal with deleterious substances and that would be Environment Canada.

MS. MACLELLAN: I'll ask them then when they present. Thank you.

THE CHAIRPERSON: Okay. I guess we're getting a list of questions for Environment Canada. Somebody should give them a heads-up there. Mr. Marmon? No. Sierra Club?

MR. MARCOCCHIO: Thank you, but I would like to briefly address the last point made.

Although deleterious substances are clearly the responsibility of Environment Canada, the enforcement of those things, the impacts of deleterious substances on those fish in a federal waterway was the question put to you, and I think that's clearly an answer that we all expect to hear.

THE CHAIRPERSON: Would you like to address that?

MR. MCLEAN: Well, again, under our mandate we do not deal with deleterious substances. However, if there was to be monitoring of any waterways where Environment -- or, sorry, where DFO could participate, I mean, we'd certainly be involved with it,

but as far as a regulatory role Environment Canada does have that mandate.

THE CHAIRPERSON: Thank you. Now, do you have a question?

MR. MARCOCCHIO: Yes. The Acres Report, 1990, showed that the Tar Ponds are contaminated with PCBs and PAHs beneath the slag which has been piled on top of the Tar Ponds and that the slag is extremely porous and coarse material with hydraulic conductivities in the order of 10 to the minus 3.

I hope you will agree that tidal flows will move readily through this high-porosity material into the area of the Tar Ponds and has been a source of contamination to the harbour.

Can you please provide the report that delineates the northeastern shore, the historical boundary of the Tar Ponds beneath the slag pile, or can you undertake to provide to the Panel what monitoring requirements are needed to ensure that this is not a source of PCBs and PAHs into the harbour in the future?

THE CHAIRPERSON: And could you just clarify the relationship of this to the current project under assessment? Is this -- are you making a direct link -- could you make the link between this concern of the source of contaminants that is outside the project

boundary to the harbour? Is this moving through the project boundaries?

MR. MARCOCCHIO: It's part of the project boundaries depending on how you define it. Acres -- the 1990 Acres Report, I think, seems to indicate that it is part of the Tar Ponds that slag was piled upon, which seemed to indicate that, in fact, this is within the project boundaries as defined by the Memorandum of Agreement. That's the first point.

THE CHAIRPERSON: Could I just ask for a clarification from the Agency, what your interpretation of this is.

MR. POTTER: I believe we've addressed this question a few times. The boundary is the existing eastern shoreline of the present day Tar Ponds Site, would not include the property that is being referred to right now. I think the previous response had been from one of the other panels -- was that the property in question would be owned by SYSCO.

MR. MARCOCCHIO: Madam Chair ---

THE CHAIRPERSON: Well, I am going to ask Fisheries and Oceans to respond to your question. I'm going to ---

MR. MARCOCCHIO: Before they do, Madam Chair ---

THE CHAIRPERSON: No, just a minute, please ---

MR. MARCOCCHIO: Sorry.

THE CHAIRPERSON: --- if I could just finish -- on the grounds that possibly if there were contamination coming from outside it could be part of the cumulative effects of -- or it could play into an assessment of the cumulative effects of the project. Do you have something to reply to that question?

MR. MCLEAN: No. Basically, we didn't look at -- that aspect of the project wasn't presented to us for review, and again I'd go back to my previous statements that contaminants coming out of any source would be under the mandate of Environment Canada.

I mean, in a general sense with contaminants in the harbour this is why we're asking for a risk assessment in the harbour in conjunction with short- and long-term monitoring to determine what impacts may be from the project before us.

THE CHAIRPERSON: Now, do you have another question that relates to the mandate of Fisheries and Oceans, a follow-up question relating to the mandate of Fisheries and Oceans?

MR. MARCOCCHIO: I do, Madam Chair, but I would like to point out that nowhere in the Memorandum of

Agreement or any documents on the public record is the delineation referred to by the Proponent listed. So, I would ask that the Proponent undertake to produce the documentation that does define the project at the western boundary of the current existing Tar Ponds.

Unless I've missed something in the Memorandum of Understanding, in which case it should be fairly easy to clear this up.

THE CHAIRPERSON: I will ask the Agency if you can just -- if you'd like to respond to that in terms of the exact boundaries of the project and how they are defined.

MR. POTTER: The undertaking we just took a few minutes ago to show the map of the boundaries should identify that, and it's quite clear that we -- when we refer to the site, the site is quite specific and it's well-defined and we'll provide the necessary mapping to go along with that.

THE CHAIRPERSON: And is that linked into the wording in the memorandum that's being referred to?

MR. POTTER: Yes.

THE CHAIRPERSON: Okay. Well, thank you. We will wait to see the results of that undertaking and then we'll revisit that. One more question, please, and it should be a follow-up questions and, if possible,

within the mandate of -- knowingly within the mandate of Fisheries and Oceans.

MR. MARCOCCHIO: Yes. I wonder if the Department of Fisheries and Oceans agrees then that given the uncertainty in the specific source of the contaminants from the harbour that a slurry wall or something equivalent should be constructed along the edge of the slag pile given that it is unlikely this material will be excavated to prevent the ongoing migration of PAHs and PCBs that are now documented to be in that material under the slag pile to prevent ongoing contamination of the harbour and to protect the harbour from continuous -- ongoing, continuous contamination despite the remediation.

MR. MCLEAN: As previously mentioned, Fisheries and Oceans will work with Environment Canada to ask that the Proponent do a risk assessment and monitoring within the harbour to determine the impact of the project on the harbour ecosystem in general, so this will be a short- and long-term monitoring program.

With regards to regulating contaminants coming from that, again I refer back to our mandate which is -- does not include Section 36 of the Fisheries Act.

THE CHAIRPERSON: Okay. Thank you very much, Mr. Marcocchio. And the Panel will look forward to

receiving the information that will be provided by the Agency and we'll ponder further on this issue of the involvement of the slag pile in this assessment review. So is there anybody else from the public, just one more question and then we are going to move on?

MS. OUELLETTE: Is the Department of Oceans responsible to report any contaminated fish to the Department of Canada? And if they -- do they deal with -- how do they deal with the recourse, does the Department of Oceans have to stop the contamination, and do they exercise this regularly?

MR. MCLEAN: Fisheries and Oceans Canada, through periodic monitoring -- it's not a regular operational thing we do, but if there is a source of contaminates in fish, that we work with other regulatory agencies to identify that, and we do have the authority under the Management of Contaminated Fisheries regulations to actually close areas for fishing if fish are identified as being contaminated and are taken as a food fish.

MS. OUELLETTE: Okay. Thank you.

THE CHAIRPERSON: Thank you. Is there anybody else from the public with one last question?

I would like to thank Fisheries & Oceans Canada for your presentation and for answering the

questions that were put to you, and we look forward to your -- the information you have undertaken to provide to the panel. Thank you very much.

I would now like to ask Natural Resources Canada if they'd like to come forward.

We'll take -- I think we'll take a 5-minute break here.

RECESS - 1:42 P.M.

RESUME - 1:48 P.M.

THE CHAIRPERSON: Are you -- Natural Resources, are you ready? Right. Okay, if people would like to take their seats, we will welcome Natural Resources Canada and invite them to begin their presentation.

--- PRESENTATION BY NATURAL RESOURCES CANADA (MR. LIVAIN MICHAUD)

MR. MICHAUD: Thank you, Madam Chair.

First I would like to thank the panel for giving us the opportunity to provide a presentation today.

Madam Chair, Panel Members, ladies and gentlemen, my name is Livain Michaud, I am a Senior Environmental Assessment Officer with Natural Resources Canada. I am responsible for co-ordinating NRCan involvement in this joint review process, and also co-

ordinating the review of the Environmental Impact Statement that was provided for this project.

I will make a very short presentation today to introduce NRCan to the panel and to provide a brief summary of our involvement in this environmental review process.

To my left is Dr. Michael Parsons. He is a research scientist specializing in the field of environmental chemistry. He works in the Atlantic office of NRCan's Geological Surveys of Canada.

Dr. Parsons was part of the review team who reviewed the EIS for this project. He also provided a number of comments that we filed with the panel on February 16th of this year.

Dr. Parsons will also make a brief presentation of the key issues that we have identified, and other key issues that were identified by a number of experts as a result of the review.

Natural Resources Canada is an economic science-based department with a mandate to promote sustainable development and responsible use of Canada's mineral energy and forestry resources, as well as to develop an understanding of Canada's land mass.

The Department also conducts research and surveys across Canada to assess these resources. More

specifically relevant to this review, NRCan also conducts environmental science research in terrestrial and marine setting in support of risk assessment management activities and to help minimize environmental impacts of development.

NRCan's role in relation to this project is relatively limited. NRCan has no regulatory or decision-making responsibilities for this project. As such, NRCan's involvement in the joint environmental review process stems from its obligation under the Canadian Environmental Assessment Act, through which NRCan has determined that it was a federal authority in possession of specialist information and knowledge.

Therefore, in the context of this review, NRCan's role is to provide technical and scientific expertise within the limits of its mandate.

NRCan's expertise relating to a remediation process, such as this one, is relatively limited.

However, based on the information that was provided on the Environmental Impact Statement, NRCan experts provided comments in three general areas, three topic areas, on environmental geochemistry related to estuarine and marine environmental processes, and on sediment stability and transport processes.

These comments were filed with the panel on February 16th, and responses to our comments by the proponent were also provided to us on March 2nd.

Following the review of the proponent's response, NRCan's technical reviewers indicated that most of the -- that most of the responses provided by the proponent were satisfactory.

However, our experts also identified three topic areas where a clarification was needed, and they are, migration of contaminates through the Battery Point Barrier, long-term stability of marine sediment in the harbour, and contaminates fate modelling.

I will now pass the mic to Dr. Michael Parsons who will speak to these topics in more detail.

DR. PARSONS: Thanks, Livain. Good afternoon.

As Livain just mentioned my own expertise is in environmental geochemistry.

Just by way of quick background, I am going to be representing the technical review on behalf -- that I've completed myself, as well as two of my colleagues at Natural Resources in Dartmouth, Nova Scotia.

The other two reviewers were Russell Parrott, he's an expert in marine geophysics and ocean

disposal sites. He worked extensively on the migration and stability of contaminated marine sediments. And also Dr. Michael Levy's specialty is in sediment transport modelling. He is actually -- he develops programmes and does modelling efforts very similar to what have been represented in the EIS efforts.

My own experience that's relevant to this project, my Ph.D. work actually ironically was on the leaching of elements from smelter slags, so I have looked at that aspect of the project and have no -- will not be discussing that in detail today here.

I also have ongoing research in the fate and transport of primary inorganic contaminates, such as metals in marine environments, and have been involved in looking at the environmental impacts of modelling in metallurgical operations.

As Livain summarized, based on our initial commentary on the EIS provided on February 16th, we had received some comments from the proponent and are left with questions regarding three key issues that are summarized on these slides.

Some of this will seem relatively familiar to those here in the room who have heard, for example, DFO bring up some very similar points, so I'm going to go through these one by one looking at various processes

related to the potential migration of contaminates through the Battery Point Barrier. Secondly, the long-term stability of contaminates in the marine sediments in Sydney Harbour, and also some of our questions regarding the modelling that had been conducted as part of the EIS of contaminate fate in Sydney Harbour.

The first point -- and these are just a quick summary of the written submission we made to the panel, there's no new information here, this is just a summary of the main points. The Cofferdam, as described in the EIS, and I quote directly from the EIS in Volume 1, page 221, was originally intended to provide:

> "...a permanent impervious barrier to aid in minimizing the release of contaminates from the Tar Ponds into Sydney Harbour as well as control water levels in the pond during the remediation of the Sydney Tar Ponds."

Now, we -- NRCan is fully aware that the design of that barrier and the environmental assessment have been handled through a separate screening report that we have received from Public Works and Government Services Canada, as well as Transport Canada, and we don't intend today here to go through the contents of that report in detail.

However, we do feel strongly that the specific design that's been proposed for that barrier needs to be considered in the context of upstream control measures that will have to be implemented during this project if it moves forward.

There is -- the current barrier design, that has been described through this screening report, is not an impervious barrier, that the barrier essentially is described primarily as a physical barrier to address concerns regarding erosion related to waves and ice action and other related physical effects on the stabilized solidified mass that would be in behind the barrier itself.

The current design also includes, as we've seen actually in the presentation from both the proponent and Public Works, there is a 50-metre barrier -- 50-metre opening in the barrier.

Our questions relate to -- we'd like some clarification from the proponent on what are the specific measures that are going to be undertaken to control the release of contaminated sediments disturbed during the construction activities that will occur in behind the barrier, specifically sheet pile installation itself, whether for the wall of the channel that is to be constructed and connected to the barrier, or the sheet

pile that will be involved in the construction of the cells.

The installation of that sheet pile, it is our understanding, will result in some suspension of contaminated sediments, and the efficiency of the proposed containment measures -- the proponent has clarified that these containment measures would, for example, include such things as booms, barriers and containment curtains.

However, in the EIS there is no information that's specifically given on the efficiency of those containment measures that provides us with any quantitative measure of exactly how much suspended sediment, as well as dissolved constituents which will be released when the pour waters, for example, in these contaminated Tar Pond sediments, are disturbed.

What we're recommending on this issue to the Joint Review Panel is that the proponent should clarify the extent of sediment disturbance that is expected during the installation of the sheet piling very early in the project, and during the actual creation of the channel itself, and subsequent in the actual excavation activities, and what is the efficiency of the control measures, specifically such things as silt curtains and containment curtains that have been

proposed.

We'd prefer to see quantitative estimates that will give us some sense of exactly what volume of suspended sediment might be disturbed during these construction activities, and exactly how efficient are these curtains. Are we talking about a 5 percent reduction in the volume of suspended sediment, or is it 95 percent. Do we have some measure of how effective those curtains will be.

Related to that, and as DFO has elaborated, we'd like to see the proponent to monitor contaminate fluxes through the barrier both during and after construction activities. This is -- certainly during the construction to ensure the regulatory limits themselves are not exceeded through the barrier. This is both through water that might make it out through this 50-metre wide opening, as well as water that would pass through the barrier itself from activities that are going on upstream.

The second main point that we would like somewhat more clarity on is the long-term stability of contaminates in the marine sediments.

As Dr. Yeats and others from DFO have summarized this morning, the marine sediments in Sydney Harbour obviously do contain contaminates from historical

inputs. Some of those have been buried to varying depths in the sediment as a result of natural sedimentation processes.

We're certainly aware of ongoing efforts, the fact that, for example, the Battery Point Sewage Treatment Plant is now reducing the input of raw sewage to the harbour. We feel that there is a possibility that as marine sediments in Sydney Harbour have less organic carbon input, both through raw sewage, as well as through direct release of material through the Tar Ponds, that that decrease in organic carbon flux could potentially lead to a short-term increase in contaminate bio-availability.

In our written submission we've provided some details on how we believe that could potentially happen. As the sediments become more oxygenated, as you have less organic carbon going into the system, that could dissolve elements that are currently bound, for example, with sulphide in the sediments, and as organisms are attracted to that improving marine habitat, we believe there is a possibility that there could be, at least in the short term, some enhanced bio-accumulation that needs to be monitored.

In addition to the simple chemical changes in those sediments, there is also -- if organisms move

into that environment, which hopefully certainly would be improving, there is the possibility of increased bioturbation or biological mixing of the sediments, which could partially offset the natural contaminate burial that Dr. Yeats has referred to in his presentation.

We believe that accommodation of these two processes could mean that, at least in the short term, and maybe possibly as much as several decades, that the marine sediments currently in Sydney Harbour could serve as a source of contaminates, not just a sink for the immediate future.

Related to this issue, we've made two main recommendations. We'd like the proponent, as DFO has summarized, to conduct a marine-specific risk assessment that would focus on establishing what the risks are to receptors in the marine environment of Sydney Harbour. The primary purpose, in our mind, would be to design effective monitoring strategies that could be used to look at both the short and long-term marine impacts of the project.

We also feel that the proponent should conduct both short and long-term monitoring, to monitor contaminate fluxes during and after remediation efforts, and also to document changes in the marine habitat in the biota.

In asking for these two points here, we essentially are requesting the same sort of risk assessment and monitoring activities that DFO has mentioned, and details on those monitoring and risk assessment activities would be deferred to Environment Canada in terms of what would be actually required that is outside of NRCan's mandate and expertise.

The final point relates to modelling of contaminate fate in Sydney Harbour as summarized primarily in Volume 7 of the EIS.

One of my colleagues, Dr. Li, feels that the contaminate fate modelling effort, while sufficient for an overall picture of contaminate release and migration throughout the harbour, it doesn't include several important processes or these are not represented in the detail he would like to see. One is re-mobilization of contaminates from the bottom sediments to the overlying water column, both through bioturbation and erosion, the effects of flocculation on sediment burial rates which, in certain areas, he feels could actually increase the sedimentation rates beyond what are actually modelled in the current effort. And also the peak tidal current velocity employed in the modelling effort, 5 cms per second, he feels is too low. It's actually 5-6 times less than the values reported by Dr. Brian Petrie of DFO

in 2001, and the absence of these processes and parameters Dr. Li feels limit the predictive capability of the model considerably.

Directly related to this point, this slide should look familiar, it's basically the exact same recommendations we made on the last point.

We feel that, at this stage of the project, that there is no point in really rehashing the modelling effort itself. We feel that the project could certainly proceed without additional modelling, but that the proponent should conduct a marine-specific risk assessment to design effective monitoring strategies and actually even monitor what those effects could be on the marine environment, and also the proponent should conduct both short and long-term monitoring to monitor contaminate fluxes during and after the remediation efforts. And finally, to document changes in the marine habitat and biota.

And that's the end of my presentation. I'll pass it back to Livain.

MR. MICHAUD: So for concluding remarks, I guess we can say that NRCan believes that the issue that we have presented to the panel can be addressed through appropriate mitigation measures, the completion of marine-specific risk assessment, and the implementation

of an effective marine monitoring programme.

And we'll conclude with that, so again we would like to thank the panel for giving us the opportunity to make a presentation today, and we'll be pleased to respond to any questions.

THE CHAIRPERSON: Thank you very much for your presentation. I've just got a couple of questions to begin with.

I remember Dr. Li making the same suggestions with respect to the first round of the Halifax Harbour cleanup, that I had some involvement in from a review panel point of view. Of course, that cleanup is -- that particular version did not happen, and the new project is not -- will be fully implemented starting next year, we hope, but I do remember him raising the spectre of the re-introduction of contaminates through the oxygenation of the sediments.

So I guess my question is, is this -- do you have information about other harbours where sewage treatment, in particular, has been introduced and this has been observed and has -- what kind of impact has there been?

DR. PARSONS: That's an excellent question, and I do not have specific -- a sewage-specific situation in another harbour.

However, there are published -- there's a fairly extensive literature base dating back to the early 90s on the effect of aeration on the binding primarily of inorganic contaminates by what's called acid volatile sulphide. It's a reactive pool of sulphide in sediments that is very sensitive to increasing aeration of sediments, both through -- for example, you would expect to see that during dredging, if marine sediments were exposed to the air or through some sort of process that actually causes less oxygen penetration into the sediments, which primarily would be a cutback in organic carbon.

I'd be pleased to provide some references from the published literature to the proponent if that's of interest, or to the panel, that do outline some of these procedures. I searched briefly for a sewage-specific example, and was not successful in a quick search, but it's certainly possible that that may be in the literature.

THE CHAIRPERSON: Well, I guess not a sewage-specific example. Are there examples of observed effects in an urban harbour situation where some organic input that was going into the harbour was stopped or remediated, or something, and that this change has actually been observed? I mean, we're actually into some

real life situations are we, or are we still in the realm of possibility?

DR. PARSONS: No, there have been some studies. I don't know the specific geography of exactly where those studies have been undertaken that have shown that a decreased organic carbon flux to the marine sediment has resulted in enhanced bio-accumulation, primarily of metals, by bethic organisms. At this point in time, I don't have those papers directly in front of me, but I could undertake to provide some references on that topic.

THE CHAIRPERSON: Yes, we will take that as an undertaking that you will provide the references to some papers with some real life examples.[u]

My second question is to do with your request that the proponents provide more information about the effectiveness of siltation control technologies, and I was just wondering if you could yourself provide some information to the panel about the range of effectiveness. Do you have some concerns that silt curtains are -- that only some types of silt curtains are effective, or that all silt curtains are not effective under certain circumstances? If you could just provide me with a little bit of background on that.

DR. PARSONS: I can explain where my

concern comes from. Partially, it's -- I'm not an engineer by training and have never used a silt curtain in my own experience. Certainly some of the members of the proponent have much more experience than I do in that respect.

My concern is that the EIS has not outlined specifically how one can allow fish passage, for example, during construction activities while, at the same time, capturing suspended sediment and dissolved constituents in the water column. It's not explained whether or not the silt curtains or contaminate curtains, are they actually fully impermeable. If not, one would assume that they would allow dissolved constituents through those curtains.

Do they capture colloidally bound material, or is it just larger suspended sediments? Do they get anchored all the way to the bottom or the proposed cleanup area and float right at the surface and go all the way to the two banks of the Tar Ponds? Those sorts of details are not provided. This is the reason for our question. If we could have additional design details, that would certainly help to answer some of those questions.

THE CHAIRPERSON: I would imagine that the proponent is eager to make some response to that now, but

if they could hold off a minute I would like to go to my colleagues on the panel to ask if they have questions to go to NRCan.

DR. LAPIERRE: Good afternoon, and thank you.

Included in your presentation is a discussion or recommendation on conducting risk assessment prior to any construction activity, including construction of Battery Point. The purpose, I imagine, of this recommendation for risk assessment intended is to assess the impact of future contaminate flux on the Sydney Harbour, as you've indicated.

I am certain you're aware that the construction of the Battery Point Barrier is not part of the project we are assessing, and I guess could you give any indication and advise us what role NRCan played in the environmental assessment of the Battery Point Barrier. Were you involved in that?

MR. MICHAUD: Do you want -- to summarize it, no, we were not involved in the screening process for the Barrier Point.

DR. LAPIERRE: And, as I said, well it's not really part of our screening process also, so I guess you understand the implications of your recommendation if it's not part of our process.

The other question, I guess, relates to the recommendation for a risk assessment that would look at, among other issues, flux and contaminates in the harbour from construction remediation activities, and we've heard from the Tar Pond Agency that they have over, I'd say, close to 600 or more reports on activities associated with studies that they've done.

I guess I would like to get your comment on this versus making recommendations for a modelling exercise. Would a viable alternative, which would focus on minimizing the release of sediments to the Tar Ponds to the harbour not be as valuable as conducting a risk assessment? Is there a need to conduct that risk assessment? It's a costly process and I guess, in the end, results -- would you get a better efficiency in the use of the money if you could provide a well-documented monitoring programme that would ensure that you would capture what could go to the harbour, and I guess wouldn't that be more simpler and provide as efficient a protection during the construction and after construction?

DR. PARSONS: No, I actually agree with your point, and that's one of the questions we had raised ourselves anyways. Clearly, collecting additional data after having -- so much has been done in Sydney Harbour,

we questioned whether that was the best use of the resources.

NRCan is not -- it's not within our own expertise or our mandate, as I've mentioned, to actually set up the details of risk assessments or design those. It's my understanding Environment Canada will be going through some of that tomorrow morning. However, in our discussions with Environment Canada, it's my understanding that it's one possibility, maybe, that there is no additional data that needs to be -- any additional field data that needs to be collected.

Our concerns stem from the fact that there was no quantitative risk assessment comparable to what was representative in Volume 6 of the EIS for the Coke Ovens and their incinerator site for receptors in the marine environment. With the lack of that quantitative treatment, it leaves some question as to exactly what should be -- what's the most appropriate things to include in a monitoring programme, specifically what organisms or what media should be sampled.

DR. LAPIERRE: I guess the question is, though, can you do that efficiently without going through the process of developing a -- you know, going through the whole process of developing a model?

DR. PARSONS: I think that the most

detailed answer that I can provide, as someone who is not directly involved in the risk assessment process, is that I think it's entirely possible. That may not be necessary to go for a full-blown risk assessment exactly comparable to what's been done for these other two sites, but I'd have to defer the details to Environment Canada that I believe is going to be speaking directly on this point tomorrow morning.

DR. LAPIERRE: Okay. thank you.

MR. CHARLES: Mr. Parsons, I tried to put my question to Fisheries & Oceans this morning, in error, and, of course, they didn't want to respond, understandably.

I guess I'm just wondering if it's true, and if you accept the premise that you put here in your summary that "the absence of processes and parameters limits the predictive capability of the model."

Let's assume you've got a model, you've gone through it, and you say to yourself "Gee, I'm not sure about this model any more." Instead of remodelling, what do you do, do you take extraordinary precautions in terms of preventative measures, is that what the approach would be? If you don't know exactly what's going to happen, I suppose what do you do, shoot for the highest rather than the lowest preventative standard?

DR. PARSONS: I think my -- in speaking with my colleague, Mike Li, we both agree that whether or not it's a limitation, a perceived limitation, at least, in the contaminate fate modelling, or some of the other processes that I've described that might result in re-suspension of contaminated sediments, both of those issues point to the need for a monitoring programme to ensure -- to validate, in some cases, the conclusions of the current modelling effort. Perhaps the current modelling effort may very well turn out to be sufficient, but without a sufficient short and long-term monitoring programme we'll never know.

MR. CHARLES: So your answer is that you would monitor then, find out what is actually happening. But at what point do you take your preventative measures? I mean, if you monitor and you find out "Gee, something's going on", but it's been going on for some time, you're sort of closing the door after the effluent's gone through, aren't you?

DR. PARSONS: That's why we've asked for a risk assessment, to establish that.

MR. CHARLES: Okay. We're going around in -- yeah, all right.

I guess the other question I have is about the efficiency of the curtains and so on.

I assume you'd have to rely on experience, or whoever is doing this would have to rely on prior experience with these things, and that's the way you'd establish how effective they are.

DR. PARSONS: That's what I'm hoping the proponent can provide for us here today. I realize that there are some people on the project team who do have a lot of experience with these things.

My own personal experience has primarily been limited to metal mine sites where I have seen these sorts of structures fail before and not be terribly effective whatsoever, and perhaps I have somewhat of a jaded point of view on how effective these structures are.

I'd like some assurances that they are going to be very effective at controlling any upstream suspended sediment that might get disturbed.

MR. CHARLES: Thank you, Mr. Parsons.

THE CHAIRPERSON: I'd just like to make a follow-up question with respect -- going back to this issue of the oxygenization of the marine sediments and the possibility of increased contaminate bio-availability, is that something that the federal government is, in fact, planning to study?

DR. PARSONS: No, that was -- and that

very point is one of the reasons that we brought that forward in our second round of questioning of the proponents, and, if I could, there's this Table 12.1-1 of Volume 1 of the EIS contains the following statement, and this is something that it was not clear to myself and my colleagues at NRCan as to whose responsibility it was. It says:

> "Environmental effects monitoring of the marine water and sediment quality in the south arm of Sydney Harbour: It is assumed that the existing monitoring programmes, as conducted by regulatory agencies, will be continued and will address this issue."

As we've mentioned in our written comments, NRCan recommends that the responsibility for this monitoring programme should be clarified prior to the construction activities, and that monitoring be conducted to assure that appropriate guidelines are not exceeded.

At this stage, it's not clear to me, at least, exactly who will conduct these monitoring programmes. Certainly, NRCan does not have ongoing monitoring in Sydney Harbour.

THE CHAIRPERSON: Well, it's an interesting little dilemma, isn't it, if, in fact, there's a contribution of contaminates that's now being made available because of sewage treatments which is the -- presumably, the responsibility of the municipality, in this instance.

So it's the dividing up of responsibilities between various contributors to -- I mean, you can't really say that the sewage treatment is a contributor to a contaminate problem exactly, can you? I mean, it may have that result, but I don't think anybody is proposing to stop installing sewage treatment plants in harbours that already have contamination.

DR. PARSONS: No, and I think that one would certainly hope that the net benefit would be very positive from that situation of actually treating raw sewage.

This is yet another reason for risk assessment, and I hope perhaps Environment Canada may elaborate on this tomorrow morning, but we recognize that there are multiple sources of contamination to Sydney Harbour, and there certainly have been historically. This could be another argument for the need to carry out some sort of risk assessment, how will one distinguish between the contribution from historical inputs to the

sediments versus what might come in once the remediation project is complete.

I don't have a direct answer right now, but I would hope that that might be something that could be addressed in risk assessment.

THE CHAIRPERSON: I don't want to be flippant, but should CBRM have carried out a risk assessment before they switched on the sewage treatment plant?

DR. PARSONS: I'm not familiar with that risk assessment, so they may have.

THE CHAIRPERSON: I don't think they did. I'm saying -- I'm trying to follow the logic here, but anyway, Dr. LaPierre.

DR. LAPIERRE: Well, I guess I listened to your points, and there certainly were many contributing factors to the pollution in the harbour, but Sydney Harbour is a federal harbour, isn't it?

DR. PARSONS: Sorry, a what harbour?

DR. LAPIERRE: Sydney Harbour is a federal harbour.

MR. MICHAUD: Well, we don't know whose responsibility is the harbour itself, but ---

DR. LAPIERRE: But it's an ocean habitat. And what would stop NRCan from doing that study itself,

you know, conducting a harbour study?

MR. MICHAUD: Well, our involvement in this process is one as a federal authority. We don't have any responsibility or any decision-making responsibility, so we can only provide advice to other federal departments.

So we would -- if it is decided through, like I say, this panel, that it should happen, and if that is accepted by the government, then NRCan maybe has to contribute to this monitoring activity. But, at this stage, we cannot tell whether or not we -- we have no obligation right now to do that.

DR. LAPIERRE: No, you have no obligations but there's nothing that impedes you from doing it, that would impede you from conducting such a study.

DR. PARSONS: Well, perhaps I can just jump in here quickly, traditionally in studies such as this we would -- unless it was part of an ongoing science programme, in the case of a place like Sydney Harbour, we could potentially respond to a direct request from a regulatory agency such as Environment Canada or, as the case may be, from DFO. And certainly there are lots of cases of that in the past.

However, there is no direct trigger for us to immediately initiate a programme in Sydney Harbour

based on the project.

THE CHAIRPERSON: I would like to turn to the proponent now. There have been a number of points raised. I realize you have requested that you get an opportunity later to ask questions, but you may have questions now.

You may also have some things that you wish to say in response to some of the things you've heard, and I think the panel would find that helpful, too.

I confess to not having written down everything that was said, some light bulbs were going on, and thinking that you might wish to add some information. I'd be interested in hearing from you particularly about the efficiency of your sediment control measures, that's one aspect. But if you'd like to address the panel now on some of these issues.

MR. POTTER: Certainly. I think the panel has addressed some important questions, as well.

We would like to discuss, just briefly, a little bit about the silt curtain aspect. We can provide some follow-up information later, but I will ask Mr. Shosky to address that, and I'll turn to Don now.

MR. SHOSKY: Thanks, Mr. Potter.

I've had extensive experience installing

silt curtains in marine and freshwater environments, and the trick of each one of them is more placement than it is with the actual manufacturing types. They're all very similar in the sense that they have a floating boom with a long curtain floating down to the bottom which is weighted. Often, depending on the hydraulics of the river, you have to add additional weight onto those systems in order to get a good seal on the ground.

As far as tidal influences and things of that nature, it's possible to set them so that they go up and down with the tide.

As far as fish passageways go, that we would have to look at in a lot more detail, and get a determination of how critical that was, because of the fact that trapping the sediments typically in those cases involves setting up multiple curtains to control one type of source activity.

The good news is is that all that type of monitoring, that's typically done by most of the regulatory agencies I've dealt with, are done using turbidity meters which, in a percent of recovery, seems to be in the over 90 percent capture rate.

So turbidity, while it's not directly related to percentages, very low releases that cause a turbidity meter to go off is the sort of thing that would

be monitored for, and, as I've said, it's used routinely and successfully in a lot of marine environments.

THE CHAIRPERSON: Could I just ask for clarification. The turbidity meter in that case would be used on a constant basis, on an intermittent basis?

MR. SHOSKY: Well, typically the monitoring occurs all the time while the excavation work is going on, for sure, and spot checks are made every day during the evenings to ensure, depending on how much energy there is in the particular system, that the silt curtains are properly placed, and things of that nature. So it's done at least during the excavation times, but I've seen people do after-hours testing, as well.

MR. POTTER: I just wanted to add that when we do get a copy of the presentation, we'd like to have a chance to take a look at the information and probably respond at a later date with some follow-up responses.

THE CHAIRPERSON: And at the moment you don't have questions of NRCan right now.

MR. POTTER: That is correct.

THE CHAIRPERSON: So do we have questions from any of the -- any government representatives that may be here of NRCan?

I will open up the questioning, then, to

registered presenters who are on my roster. I would really like to encourage you to ask questions, or endeavour to ask questions, because I know it isn't always easy, but that you endeavour to ask questions that fall within the mandate as was stated at the beginning of the presentation. It's not helpful to the panel or to any of us, I think, if questions get posed to people who simply do not have the mandate to answer it. I accept that it isn't always -- you don't always know whether your question falls within their mandate, and sometimes it's not possible to do that. So I really would encourage that.

So I'm going to start at the bottom of my list instead of the top of my list. It may not make any difference in the end, but Mr. Ignasiak, do you have any questions?

MR. IGNASIAK: Madam Chair, I was really very happy to hear that the mandate of Natural Resources Canada is to support sustainable development.

My question is as follows. Would I be correct in stating that the remedial actions proposed by the proponent for the Sydney Tar Ponds, and, in particular, the result of these remedial actions, do contradict the very principles of sustainable development?

MR. MICHAUD: Madam Chair ---

THE CHAIRPERSON: Are you prepared to answer that question? I'm not quite sure if I would be able to tackle that question.

MR. MICHAUD: Can we just not answer this question?

THE CHAIRPERSON: I'm not sure. I will ask Mr. Ignasiak if he would like to ask this question ---

MR. IGNASIAK: I'd be happy to translate that into a different language.

The principles of sustainable development are that any actions that we are taking today should not really have a negative impact on future generations. This is according to Environment Act of Canada.

MR. MICHAUD: Well, I guess the question, if I can rephrase that question, is that ---

THE CHAIRPERSON: Well, I believe -- I'm not sure how you're going to answer the question. I think there were so many assumptions built into that question, I really wouldn't expect you to answer it. I think ---

MR. MICHAUD: Thank you, Madam Chair.

THE CHAIRPERSON: Thank you.

Sierra Club?

MR. MARCOCCHIO: Thank you.

My first question, Madam Chair, relates to a question that you posed in your comments, ones that we at the Sierra Club are sharing, and it's with respect to climate change and the effect of climate change on the ultimate success or failure of this proposal.

As you point out in your comment, it's very clear that a conservative estimate now is that by the year 2100 there will be a 70 cm rise in sea level, and this, in combination with the increases in frequency and severity of severe weather, will lead to more significant flooding and erosion of the cap material.

The response seems inadequate, to me, and I look to you for some direction as to what you think first of all about the adequacy of the response, and secondly the ability of this proposal to deal with a 70 cm increase, within a matter of decades, of sea level, and the attendant storms and inundation, keeping in mind, for instance, that we clearly had a least a 1-in-a-100 storm event here just two weeks ago in Sydney when a stream that crosses Townsend Street, one of the major streets in Sydney, had to be closed down because of flooding in that brook channel before there's any

restriction in the flow of that tidal estuary.

So I guess the question is are you satisfied with the response, and do you expect that with the increase -- reasonable increase expectations in 1-in-a-100 year storm events may, in fact, in the future be 1-a-year or 1-in-5-year events, that a significant storm surge and tidal event, do you think this is adequately designed to prevent the inundation of the stabilized material and the risk of contamination of the harbour?

MR. MICHAUD: Madam Chair, the expert who provided the comments on that topic is not here and I don't think we can respond on his behalf as to why he thought that the response was appropriate.

If you want, we can do an undertaking and provide a rationale of why we think the expert thought that the response was appropriate.

THE CHAIRPERSON: Yes, we'd be pleased to accept that undertaking. So, in response to Mr. Marcocchio's question --- [u]

MR. MARCOCCHIO: Thank you. I'll have more questions.

THE CHAIRPERSON: While you're standing there, why don't you take your second question now. That will be more efficient than bringing you back. Do you have another question to ask?

MR. MARCOCCHIO: Yes. As a matter of process, Madam Chair, I hope to suggest that perhaps setting aside a block of time to ask a series of questions might -- for the sake of efficiency of time, might be the appropriate way to proceed.

THE CHAIRPERSON: Well, we'll consider that. Right now I'll ask you to -- invite you to ask your second question.

MR. MARCOCCHIO: Is it your understanding that the proven technology and best available technology for control of mercury emissions is activated carbon application with fabric filter in the baghouse, which is the leading technology being proposed for the control of mercury as part of the Canada-wide standards for coal-fired power plants?

DR. PARSONS: You correctly point out, obviously, that in our first round of comments on February 16th one of the questions I personally raised was simply that in addition to organic contaminants in the Tar Ponds the levels of mercury were not insignificant, I believe levels of 2 to 3 ppm in some case.

I am not -- I have no direct experience with air quality control devices, and so I'd ask the Panel perhaps if we could defer that question directly to

those experts at Environment Canada tomorrow morning.

THE CHAIRPERSON: Yes, we can do that.

MR. MARCOCCHIO: Thank you.

THE CHAIRPERSON: Okay. Thank you. Mr. Marmon? No. Save Our Health Care?

MS. MACLELLAN: Since I'm not sure this falls under their realm, I'll ask a simple question first.

Do you consider drinking water a natural resource, and, if so, are you prepared to ask a couple of questions -- answer a couple of questions about drinking water?

MR. MICHAUD: It's not a natural resource under the mandate of Natural Resources Canada.

MS. MACLELLAN: So, it's not a natural resource, water?

MR. MICHAUD: It is a natural resource but not -- we don't have a mandate to deal with that resource.

MS. MACLELLAN: So, who does?

MR. MICHAUD: Environment Canada maybe.

MS. MACLELLAN: Environment Canada.

THE CHAIRPERSON: If you want to bring your question to either Environment Canada or to the provincial Environment and Labour.

MS. MACLELLAN: Okay. Thank you.

THE CHAIRPERSON: Thank you. Do we have questions from anyone else in the audience?

I would like to thank Natural Resources Canada for your presentation, and we'll now take a five-minute break.

I'm going to invite -- as I indicated earlier, if Public Works and Government Services Canada would come back and we're going to have a short block of time for some additional questions to them before we adjourn this afternoon. So, thank you very much.

--- Upon recessing at 2:42 p.m.

--- Upon resuming at 2:49 p.m.

THE CHAIRPERSON: If you would like to take your seats. I would like to thank Public Works and Government Services Canada for returning so that we can just put a few more questions to you and provide that opportunity to members of the public as well. I would like to begin. I do have two questions.

--- PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

THE CHAIRPERSON: The first question relates to your status as a responsible authority. At the moment you share -- if you could clarify for me -- you share that role right now within Environment Canada?

MR. SWAIN: Yes, that's correct, we do.

THE CHAIRPERSON: And only Environment Canada?

MR. SWAIN: That's correct.

THE CHAIRPERSON: And the trigger for Environment Canada being a responsible authority is what?

MR. SWAIN: We understand it's a regulatory trigger, that they have permits to authorize. Maybe John Appleby could provide some clarification on that.

MR. APPLEBY: Primarily, I believe, in relation go the mobile PCB incineration regulations pursuant to the Canadian Environmental Protection Act.

THE CHAIRPERSON: Under what circumstances would those regulations apply to the proposed incinerator? We had some discussion yesterday about this, so some clarity would be appreciated.

MR. APPLEBY: I don't -- I hate to do this to Environment Canada again, but I would perhaps defer that question to Environment Canada for explanation.

THE CHAIRPERSON: Is it possible that the application of those regulations has something to do with the ownership of the land that the incinerator would be on?

MR. APPLEBY: Yes, that's correct.

THE CHAIRPERSON: And this means that if

it's federal crown land that these regulations would apply?

MR. APPLEBY: I believe the regulations apply if the facility is operated on federal lands or is operated under contract to the Federal Government. I believe those are the two conditions. And if I'm missing something, my apologies to Environment Canada.

THE CHAIRPERSON: No, that's fine. Well, we'll get them to confirm that one way or the other, but that's -- thank you for that.

Now, my understanding is that the proposition is that by the time the proposed incinerator would be, in fact, installed, sited, that that land would have been -- the proposal is that that land would be transferred to the Province.

MR. APPLEBY: Yes, that's my understanding. Yes.

THE CHAIRPERSON: Which leads me to my grand conclusion that I'm putting before you in case you could give your opinion on it, but is it possible then that you may end up as the sole responsible authority?

MR. APPLEBY: You know, pending an analysis of what you just outlined, yes, it's possible.

THE CHAIRPERSON: What are the -- are there any implications with that? Is there anything that

we should know about?

Now, my understanding that as an RA you will then have -- if you were to be the sole RA, that you would have the sole responsibility for ensuring that the -- that all appropriate mitigation of the project takes place over its life and certainly over the 35 years, initial 35 years. Is that correct?

MR. SWAIN: That would be correct.

THE CHAIRPERSON: Can you tell me a little bit more about how you ensure that that happens. What power do you have as an RA to ensure that mitigation -- the appropriate mitigation happens?

MR. SWAIN: I'll let John Appleby answer that.

MR. APPLEBY: The follow-up sections of the Canadian Environmental Assessment Act, for those who don't know, require federal authorities -- sorry, responsible authorities to verify environmental impact predictions and to verify the efficiency or workability of the mitigation measures. And I'm paraphrasing.

And so that's a tie-in, and we fully expect, as does at this point in time Environment Canada, that a follow-up program in respect of this project will be developed. And so there are requirements over time -- they have temporal components to it as well. So, there

will be requirements over time to ensure that the project -- you know, that the impact predictions are accurate and that mitigation is working.

The second part of that would be through the effects monitoring -- is what it's commonly referred to -- whereby regulatory requirements -- where a monitoring program is run to ensure that regulatory requirements are being met and that no laws are being broken.

And the third part of that -- sorry, that's compliance monitoring. The third part of that would be through effects monitoring, and if -- I think I understood your question correctly, you were wondering how this would come about and how we would engage in ensuring that this took place. Is that correct?

THE CHAIRPERSON: Yes.

MR. APPLEBY: The way these -- I can describe that generally at this point in time, whereby federal and provincial agencies, and in fact experts from elsewhere in the private sector and so on, are called together to ensure that the effects monitoring programs are appropriately scoped.

And the next part of that is to facilitate or implement related monitoring programs which relates, of course, back to funding, and that is a question which

would have to be explored over time to ensure that these are implemented.

Very often it's in the hands of the Proponent to implement required monitoring and report back for review and affirmation.

MR. SWAIN: Could I add one point there?

MR. APPLEBY: Yeah.

MR. SWAIN: One of the features as is seen in our agreements, in our management frameworks, is the independent engineers' monitoring and verification as we move along on the activities of the project and the performance of the Sydney Tar Ponds Agency, and one of those critical issues is environmental compliance.

THE CHAIRPERSON: You are not -- Public Works wouldn't -- you are not in a position where you need to issue any approvals to this project?

MR. SWAIN: Just the money.

THE CHAIRPERSON: And that was what I was going to say, your stick is money. Is that a problem in any way in terms of kind of ensuring that the follow-up that we're talking about happens?

MR. SWAIN: I think one thing that we would add is if this was an eventuality, if there wasn't -- if there isn't a trigger here or there's no requirement for Environment Canada's regulatory

responsibilities, Environment Canada still has funding allocated to them for their activities in providing expert advice and assistance to the initiative as it goes forward, and I understand that that allocation of funding would continue to exist for the life of the project.

And if we had a need for their assistance or advice, if the initiative did, then they would be available to assist us in any way that was necessary.

THE CHAIRPERSON: So, this is a funding commitment outside the funding under the MOA, Memorandum of Agreement?

MR. SWAIN: Yes. For clarification, there is another allocation of funding for the operations of federal departments, including Public Works and Government Services Canada, Environment Canada and Health Canada for the 10-year duration of the agreement, and that current funding allocation is in the area of $40 million dollars over and above the $400 million dollars.

THE CHAIRPERSON: I have a second question. It's moving on to the VJ Site, proposed site for the incinerator.

Now, as a department you have some current involvement with that site. Perhaps you could tell me what that is.

MR. SWAIN: Yes, we do. Currently we do

have some involvement as a service provider in assisting the Cape Breton Development Corporation in carrying out its remediation of that site.

THE CHAIRPERSON: Now, ordinarily, you know, if there is no remediation requirement, no contamination on a piece of crown land, just in general terms what are the terms and conditions that -- under what circumstances can that land be sold or change hands?

MR. SWAIN: Perhaps I'll refer that to ---

THE CHAIRPERSON: Or maybe I should be a little more precise in my question, sorry. Are there requirements to -- can the land be given away? Are there requirements to sell it? Are you required to get market value for it? This is for a piece of uncontaminated land.

MR. SWAIN: Okay. I think there is -- Cape Breton Development Corporation does have a policy in this respect and that policy is to get fair market value for their properties upon divestiture. Currently they have -- they're subject to a Divestiture Dissolution Act and I believe that's one of the drivers under that act.

THE CHAIRPERSON: And in terms of the land -- the proposal -- I mean, you're familiar with the -- obviously you're familiar with the fact that the Proponent is hoping to have that land in provincial

ownership before the incinerator goes on it.

Do you have some involvement in this kind of negotiation process between DEVCO and the Province?

MR. SWAIN: We have helped facilitate some of those discussions.

THE CHAIRPERSON: Are there any particular requirements around the sale of land if there's contamination or ongoing liabilities associated with it?

MR. SWAIN: I'll turn that one over to Bruce Hilchey.

MR. HILCHEY: Yes, there's Treasury Board policies that apply to the sale of lands in general and of contaminated lands in particular. The Treasury Board policies require the -- when they're held by departments that are subject to those policies, to clean it up or to ensure that if a transfer takes place that measures are put in place so that the purchaser follows a remediation activity.

Now, with respect to CBDC, I believe they have their own policies, they are not subject to the Treasury Board policies because it's a crown corporation.

THE CHAIRPERSON: So, we should ask them?

MR. HILCHEY: I think so, yes.

THE CHAIRPERSON: Okay. All right. Well, thank you very much.

DR. LAPIERRE: I just would like to understand -- if you were to become the RA, the authority responsible, if there was permitting, for example, I'm trying to understand the process that would happen.

Let's say -- let's take an example, that the Tar Ponds, for example, are federally owned by 60 percent or so. If you're going to put a monolith in the Tar Ponds and it's ocean land or estuary, how would you go ahead deciding whether it needs to be permitted under the Ocean Dumping Act?

MR. SWAIN: I'll refer that question to John Appleby.

MR. APPLEBY: You may anticipate where I'm going to refer the question to as well.

DR. LAPIERRE: I thought you would.

MR. APPLEBY: Yeah. Currently it's my understanding that there is no ocean dumping trigger -- sorry, ocean dumping action required on the part of Environment Canada for this project, but there may be, and I guess I would have to go to them for confirmation. I can't say for sure.

DR. LAPIERRE: So, I'll ask them tomorrow when the trigger starts.

MR. APPLEBY: Yeah.

DR. LAPIERRE: Okay. The other question

may be much more simple for you. In your statement of February 16th -- and it refers to a statement I made this morning but maybe I wasn't quite clear enough.

In your letter you do indicate that you would like to -- the Mi'kmaq Ecological Knowledge Study, that you would be -- you understand is currently under review, and in your letter you state that you look forward to receiving the document as it relates to a very potentially important effect of the project for you and that you look forward to reviewing it.

I guess the question I would have, could you forward your comments once you have had time to review it because -- or have you had time to review it and you have comments?

MR. SWAIN: I don't believe we had any comments. I believe that was a component of the EIS, although I could stand corrected. I believe that was where it was incorporated.

DR. LAPIERRE: Yes, it's Appendix "M" in the EIS.

MR. SWAIN: No, we didn't have any comments with respect to it.

DR. LAPIERRE: Okay. Thank you.

THE CHAIRPERSON: Actually, I just -- if I could turn to the Proponent just for a follow-up

question. Perhaps you could clarify this.

With respect to my questions regarding the transfer of land or sale of land by DEVCO to you for the siting of the incinerator or to the Province, have you specified how much of the VJ Site? You don't want the whole VJ Site, do you, for this? And do you -- have you -- the portion of the land that you're interested in, does it have contamination on site?

MR. POTTER: I guess you're getting into details I can't provide right now. I know there's been simply a letter of intent submitted to DEVCO expressing an interest in acquiring the land. That's about the extent of how far that's gone at this point in time.

There is, as indicated, remediation activities going on at that property. The timing of such is compatible with our project. I believe they have a couple of years left to -- a year or two left to complete their remediation and in about that time we would be interested in coming onto that property.

So, it would be -- at this point in time there's been not much in the way of discussions, so I don't think those details have been addressed.

THE CHAIRPERSON: And their remediation, as far as you know, will not require any ongoing monitoring or maintenance?

MR. POTTER: I'm not familiar with the details of the work that's going on there. We, of course, as a potential purchaser, wanted to take a look at that, but I couldn't answer the question right now in terms of what they're doing.

Recognizing it's a remediated, managed site I fully expect that there will be the necessary monitoring associated with the long-term aspects of the site and that would no doubt become part of the discussions of acquiring the land.

THE CHAIRPERSON: Okay.

MR. SWAIN: Madam Chair, it's our understanding that there will be ongoing monitoring and maintenance on -- or ongoing monitoring on that site.

THE CHAIRPERSON: Okay. Thank you. So, I would now like to allow some additional time for questions from the audience. I think the simplest thing is, could I just have an indication just by hands of how many people have questions? I see one, two, three. Am I seeing everybody?

I'm going to propose to allow each of you, if you want it, a 10-minute block to ask questions before we finish and then I will also go back in case the Proponent has any interest in any questions at the end, and then we will close this session down.

So, I'll go to Sierra Club first.

MR. MARCOCCHIO: Thank you, Madam Chair. I would first like to ask the representatives of Public Works and Government Services Canada a rather disturbing -- about a rather disturbing article in today's Cape Breton Post with respect to a debate between our Liberal MP, Mark Eyking, and Rona Ambrose, the Minister of Environment, yesterday.

According to this news story, there is no commitment to federal funding for the cleanup of the Tar Ponds that was included in the environment budget of the previous Liberal Government and Rona Ambrose has given no indication or, apparently, commitment to the Tar Ponds cleanup.

They point generally to the fact that -- the new Federal Government apparently points to the fact that it should be Public Works Canada that has this money budgeted. So, the question is with respect to the confusion that this story today provides.

Is the federal commitment of $280 million dollars secured and budgeted for and ---

THE CHAIRPERSON: If I can just -- oh, sorry, go ahead.

MR. MARCOCCHIO: --- and if so, by what department?

THE CHAIRPERSON: If I can just interject. Have you had a chance to read that article? I haven't. I'm going to ask you to table that article so we can -- as an exhibit. So, I guess I'm going to have to take your paper away from you but -- so you have had a chance to read that? Yeah.

MR. SWAIN: Yes. Ms. Kenny is our closest connection to Ottawa, so we'll ask her to answer that question.

MS. KENNY: Thank you, Ken. I don't think any of us sitting at this table are really in a position to speculate what our ministers may or may not have meant or how things are interpreted in the media as far as that goes.

But I do think, as you've heard here today, that we have a Memorandum of Agreement in place, signed by both the Federal Government and the Province of Nova Scotia where the Federal Government did give a commitment for funds and certainly up until this point we have no reason to believe that there is any other strategy afoot that would take us away from that road.

MR. MARCOCCHIO: But my question was specifically, has the money been allocated from either the federal budgets of the Department of Environment or Public Works and Government Services Canada? So, am I to

assume that the answer to that question is no?

MS. KENNY: I think you heard earlier this morning that there -- funding has been provided through our Treasury Board for the first part of the preliminary works and the preparatory works.

Following this process we are then in a position to better understand exactly what the costs will be depending on any modifications to the project, and it's from there that we do go back to our Treasury Board -- well, through minsters ultimately who make decisions and then to our Treasury Board to seek funding.

MR. MARCOCCHIO: I'm not sure -- I hope that's more clear to you, Madam Chair, than it is to me.

I understand that the Public Works and Government Services Canada completed an economic evaluation of the project alternatives. Can you specifically provide your evaluation of these alternative technologies to the Panel and public?

MR. SWAIN: I'm not aware of any economic evaluation of project alternatives that was conducted.

MR. MARCOCCHIO: Public Works and Government Services Canada are referenced as being part of that economic evaluation in the Environmental Impact Statement. Is that statement incorrect?

THE CHAIRPERSON: The reference I assume

-- and let's make sure that we're all talking about the same reference. You're talking about a two-page -- do you have your reference there?

MR. MARCOCCHIO: I don't have it here in front of me but I ---

THE CHAIRPERSON: It's always great to have a reference.

MR. MARCOCCHIO: Yes.

THE CHAIRPERSON: Then everybody is on the -- literally on the same page. I'll say this and then you can say if it sounds like the right thing. Page 280, and the specific reference was that -- it's about the costing. It's not 280, is it?

The only reference that I found in that section to Public Works was, I'm sorry, 287, and where it says:

"Cost estimates contained..."

This is the one you're talking about?

"Cost estimates contained in the RAER are not an accurate reflection of the true costs of implementing the various remediation options."

MR. MARCOCCHIO: Yes.

THE CHAIRPERSON: These reviews -- so that independent reviews of the RAER cost estimates were

carried out by Conestoga Rovers, Public Works and Government Services Canada, SA/[?] Consultants and STPA staff. So, that's the reference to which Mr. Marcocchio is referring.

MR. MARCOCCHIO: Yes, that's right.

THE CHAIRPERSON: Do you want to just tell me what -- and I believe I asked a question related to this this morning, too. Would you just like to explain what it was that -- how much involvement you had at that stage.

MR. SWAIN: Yes, I believe we perhaps were assisting with the analysis. I'll refer that question to Randy Vallis.

MR. VALLIS: Yes, earlier this morning I mentioned that we did look at some of the numbers there and our mandate was to review the cost estimate presented in the RAER and identify the likely range of costs projected and to confirm the other considerations that might not have been within those estimates.

So, we looked at the estimates and from that point of view looked at it to see were there any areas that needed to be beefed up or questioned and we presented that to Environment Canada, CRA and Nova Scotia Public Works and Transportation.

THE CHAIRPERSON: So, you provided some

kind of component information that was then rolled into the revised cost estimates?

MR. VALLIS: It was basically to put in context the information that was presented to us in the -- again, in the actual RAER document, its estimates, and the items there, and put it in perspective of -- as a preliminary risk analysis of items for each component.

And we just put together our thoughts on it and presented it to them, in particular, again as I said, a preliminary risk analysis, and the information was for consideration of the remediation action report documentation for both the Tar Ponds and the Coke Ovens, the Sydney Tar Ponds cleanup sampling reports, and these are the documents that we looked at.

And, again in the project management very -- the first step is in -- is risk management, is to develop my preliminary risk analysis which PWGSC completed and then proceeded during the project development to a risk management plan, which would include mitigated measures and plans to mitigate the identified list. So we reviewed their documents and we presented it to them as some questions for them to consider in their costing.

THE CHAIRPERSON: Thank you.

MR. MARCOCCHIO: Just for the sake of

clarity it refers to the question that The Chair just put to you in terms of it being a component of the costs, were you part of the evaluation that in particular came to the conclusion that the JAG option 3, remedial option 3 for the Tar Ponds, that is a train of technologies that included soil washing, thermal desorption of the PCB hot spots and off site disposal of the concentrated PCB waste would, indeed come in at over a billion dollars?

Or were you just part of the general analysis that added some relatively minor costs to that option 3 that the community has selected and that as we have since found out has not been moved forward with using only the economic justification. So this is particularly germane to the deliberations of the panel in the involvement of Public Works and Government Services Canada and the extent to which the costs and those deliberations that you were involved in led to the abandonment of the community's choice?

THE CHAIRPERSON: My goodness, can you extract the question from that? I'm afraid you lost me a little bit there. Could you just say the question at the beginning because I know you have the question at the beginning, then you had a few more ---

MR. MARCOCCHIO: Well, simply put, the Proponent has claimed that the costs have more than

doubled for the choice that the community made and selected first. Were you a part of that decision-making that concluded that the costs of their option 3 for the Tar Ponds clean up was in fact over a billion dollars.

MR. APPLEBY: We were part of providing a minor role in passing the information on our experience and so forth. Our contribution was small. We did not select any option.

THE CHAIRPERSON: Thank you.

MR. MARCOCCHIO: Thank you. I have ---

THE CHAIRPERSON: You have one more question and then ---

MR. MARCOCCHIO: One more question.

THE CHAIRPERSON: Good.

MR. MARCOCCHIO: And I'll have to wing it here because I've lost it. But the question is that one of the primary justifications for this project was that it would bring -- a second major objective of the EIS is the economic benefit to the community. When you evaluated the economic benefits for the community did you consult with business leaders on the potential negative impacts on economic viability of the community due to the existing contamination in the residential community, which is not currently part of the remedial activities proposed in the EIS? And in your expert opinion would

you agree this is a negative impact on the potential economic viability and growth of the community.

MR. SWAIN: To the best of our knowledge we did not conduct any such evaluation.

MR. MARCOCCHIO: And in your expert opinion do you think this would have a negative impact on the perception and the potential economic viability and growth of the community as a result of the remediation activities?

MR. SWAIN: I don't have any opinion to offer in this regard.

MR. MARCOCCHIO: Does Public Works and Government Services Canada have any opinion?

MR. SWAIN: I'll repeat, I don't have any opinion to offer in this regard.

THE CHAIRPERSON: Thank you very much. And if I could just get an indication of who else had said that they were going to -- I'll take Mr. Ignasiak next. Yes, would you like to come to the -- yes, if you'd come to the mike please.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

--- QUESTIONED BY MR. LES IGNASIAK

MR. IGNASIAK: I'm working for a number of companies that submit to Public Works and Government Services detail cost estimate for this option that my

predecessor was referring to. And this option was three hundred ninety-two million dollars ($392,000,000) plus minus five percent. And it was a guaranteed option. Have you come across this option?

MR. SWAIN: I'm not aware of any such submission to Public Works and Government Services Canada.

MR. IGNASIAK: Madam Chair, I have a lot of letters with me. I will try to recover that and I will leave this letter with you.

THE CHAIRPERSON: Thank you. Yes, Ms. MacLellan.

PUBLIC SERVICE CANADA

--- QUESTIONED BY MS. MARY RUTH MACLELLAN

MS. MACLELLAN: I just have a couple of short questions. This morning you said that first it was seventy million that was spent so far and then you said twelve million. I'm not sure if there was an undertaking to provide us with a breakdown of those costs and just exactly where they were all used. If not could we have that breakdown?

MR. SWAIN: Just one second.

THE CHAIRPERSON: I'm afraid I don't have a list of the undertakings that have been made today. I'm sure I can get that information but I can't confirm

anything at the moment.

MR. SWAIN: Well, I have an answer for that. It was actually two issues that were discussed. The first of which was something that we referred to in our presentation where we talked about the -- essentially we have four hundred million dollars ($400,000,000) for this initiative.

But for this project which is under consideration of the panel we have three hundred and twenty-seven point five million and there is -- there was identification that there have been some components of that four hundred million dollars ($400,000,000) that are for purposes other than the project components that are under assessment here. In particular, they total up to about seventy-two and a half million dollars ($72,500,000).

And those are expenditures that are forecast to be made over the ten year duration of the project. Specifically in broad categories they include the establishment and operational funding of the Sydney Tar Ponds Agency for the ten year period. That is expected to require about twenty-one and a half million dollars ($21,500,000). The funding for the appointment and the work of the independent engineer is expected to comprise about twelve million dollars ($12,000,000).

The preventative works projects which are the four projects that are undergoing to contain the current dispersion and contaminants on site and to take care of necessary initial projects are estimated to cost seventeen million dollars ($17,000,000). The conduct of this environmental assessment including the preparation of the environmental impact statement related studies and this process that we sit in today is estimated to cost about five million dollars ($5,000,000).

We have a funding for community and First Nations engagement of approximately four million dollars ($4,000,000) and our contingency that is yet unallocated is about thirteen million dollars ($13,000,000). Those figures total up to about seventy-two and a half million dollars ($72,500,000). The other reference was to the fact that we indicated earlier today that approximately twelve million dollars ($12,000,000) has been spent to date and that twelve million dollars ($12,000,000) would have been the actual expenditures incurred against those budgetary items.

MS. MACLELLAN: Are we permitted to have a breakdown of that actual twelve million dollars ($12,000,000) in writing?

MR. SWAIN: We expect that we'll have a final accounting for the expenditures to the end of the

fiscal year in 2005/2006, sometime within the next month or so. I'm not sure if it will be available before the conclusion of this process.

MS. MACLELLAN: You mentioned before that you had funding secured for the ten year period. It looks like the budget is not too sure about that but I'm wondering about the 25 year ongoing monitoring process after the project is completed. Does that money come out of the four hundred million dollars ($400,000,000) or where is it coming from?

MR. SWAIN: Yes, it does come out of the four hundred million dollars ($400,000,000.)

MS. MACLELLAN: Okay, back to the Victoria Junction site that was picked for the supposed incinerator. And you mentioned that there's work there now. DEVCO is doing some clean up work there.

MR. SWAIN: That's correct.

MS. MACLELLAN: Do you know if there was an environmental assessment done before this work was carried out?

MR. SWAIN: Yes, I believe there was.

MS. MACLELLAN: Is that available to the panel or was that -- is that available?

MR. SWAIN: I believe you'd -- it's necessary for you to request that from the Cape Breton

Development Corporation.

MS. MACLELLAN: Wouldn't that have any impact on -- the environmental assessment done then and the remediation that's being done, would that not have an impact now on the sites for the incinerator, so therefore it would have a bearing on this panel?

MR. SWAIN: Yeah, our understanding is that would have been taken into consideration by the Proponent in the preparation of their environmental impact statement and perhaps that issue should be directed to the Proponent.

THE CHAIRPERSON: Well, I was just going to ask a question of clarification to the Proponent if -- and did you take into -- did you use any of the information that had been gathered through the environmental assessment for the remediation of the VJ site.

MR. POTTER: I will ask Mr. Duncan to address that.

MR. DUNCAN: The simple answer is yes, we did have access to extensive information provided to us by DEVCO and by Public Works who have done investigative work on the site. So we were able to incorporate that information into our baseline work.

MS. MACLELLAN: Is it on the EIS anywhere?

MR. DUNCAN: The information that we gathered about the baseline conditions of the Victoria Junction site is included in the section 5 of the description of Victoria Junction itself, yes.

MS. MACLELLAN: But the environmental assessment itself was not there?

MR. DUNCAN: We didn't include the environmental assessment. We included the information that was relevant to the project for our evaluations.

THE CHAIRPERSON: Is the assessment, environmental assessment referenced?

MR. DUNCAN: I would have to check that but I'm uncertain.

MS. MACLELLAN: Could you tell me why the fish all died in that Kilkenny Lake about three years ago and why the frogs all died?

THE CHAIRPERSON: Well, are you ---

MS. MACLELLAN: Wouldn't that be part of the environmental assessment?

THE CHAIRPERSON: You are directing your question to Mr. -- to Public Works.

MS. MACLELLAN: Okay.

THE CHAIRPERSON: I'm not sure whether that's under their mandate to answer but ---

MR. SWAIN: No, again I think those are

issues which should be addressed to the Cape Breton Development Corporation.

THE CHAIRPERSON: If you'd like to make a note of that.

MS. MACLELLAN: Okay. I will make a note of it. For a couple of years I had the frogs frozen in my freezer and they did all die before I froze them.

THE CHAIRPERSON: Oh, I have to ask. Are they still in your freezer. All right. Ms. Kane. Yes, that's -- come forward, please.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

--- QUESTIONED BY MS. MARLENE KANE

MS. KANE: I'm sorry, I was at work so I missed most of the proceedings today.

THE CHAIRPERSON: We have noted and appreciate the fact that you've come rushing over here after work. That's very dedicated.

MS. KANE: I wish I could get here earlier but anyway, thank you for making it so available to the public as far as the hours go, though, we -- I certainly appreciate it.

With regards to public consultation in future community involvement with this project, Public Works and Government Services Canada is currently participating in closed door monthly meetings with Sydney

Tar Ponds Agency, selected members of the community and other government reps. Unfortunately the general community is locked out of those meetings as is the media.

Minutes of the meetings are not available to the public until they are approved the following month and are at times not posted on the internet for four months. I'm wondering is this how your department will continue to consult with the community?

MR. SWAIN: The responsibility for implementation of the project and the direct responsibility for maintaining relations with the community is that of the Sydney Tar Ponds Agency. We understand there have been Community Liaison Committee terms of reference that have been approved by the project management committee but I think I'd like to refer that question to the Sydney Tar Ponds Agency for a response.

I sit as an ex-officio member or observer at those meetings and I don't think I'm in a position to respond to that particular concern.

THE CHAIRPERSON: Would the Agency like to respond to that question at this time?

MR. POTTER: We do try to make the information, the minutes from the meeting available on the website on a regular basis. If you wish later to

draw my attention to any minutes that have been late getting on the site -- I understand that they routinely go up the following month once they're approved after the monthly meeting.

In relation to the closed door, your reference, the committee is -- the CLC, Community Liaison Committee is an operating committee with a mandate and a terms of reference that they operate under. The committee was asked if they wished to open the doors to have other members of the public or media attend. At the wishes of the community committee they choose not to.

MS. KANE: But these are selected members of the community so the general public doesn't really have a say then in those types of decisions of whether it should be open to the community. In a general -- I'm just talking as observers even, the fact that we've been excluded as has the media.

And I really -- I understand Mr. Swain why you've transferred the question over here but I'm wondering, does the -- you know the Federal Government is a participant in these types of meetings and I wonder you know, do they approve of these closed door meetings and excluding the public?

MR. SWAIN: Again the Province of Nova Scotia is responsible for implementing this project

through its -- through the Sydney Tar Ponds Agency and we feel that those decisions are entirely the responsibility of the Province of Nova Scotia and the Sydney Tar Ponds Agency.

MS. KANE: So there is no plan to change the closed door meetings, the exclusionary meetings?

MR. POTTER: The consultation that the Agency engages in is widespread. The CLC is but one component of that. We routinely meet with other groups within the municipality be it the university, the business community, the medical community, groups that wish to meet we meet with general individuals. We meet with the Grand Lake Road Association that's interested in this project. We -- our doors are open to meet with anybody.

We've offered that to a number of groups including some of the groups that in this room today. Again, as I say the Community Liaison Committee is a separate committee, one of many that we have. We make an effort of making information available as widely distributed as we possibly can. We've talked about our website where we have daily the air monitoring data posted.

We have now two web sites -- web cams, the Tar Ponds and Coke Oven cams. We make every effort we

can to engage the community in the broad -- wide spectrum of measures and the CLC is one of those as I indicated. The CLC were -- have a terms of reference that they operate under. The numbers represent a very diverse number of organizations in this community, organizations that each of those perspective representatives go back and consult with on a regular basis. We encourage those members to engage their associations or organizations to bring back to the table any issues or concerns that they may have and they do so on a frequent basis.

MS. KANE: Just one other comment on that if I could. I mean those are planned arranged monthly meetings discussing the -- how the project is proceeding and you're excluding the public and media. And I think it should be reconsidered. Thank you. Thank you, Madam Chair.

THE CHAIRPERSON: Actually -- thank you --I would like to just ask a question to Mr. Swain and you may need to refer this but you're involved, I believe, with a number of DEVCO sites, the remediation or you have been in Cape Breton.

MR. SWAIN: That's correct.

THE CHAIRPERSON: Yeah, and can you tell me anything about the -- this is just for information purposes, but anything about the consultation programs

that you generally carry out in connection with those remediations?

MR. SWAIN: Yes, I haven't been directly involved myself. The department has. I believe the consultation programs that will be undertaken in the future will be under the jurisdiction of the Canadian Environmental Protection Act. I believe that DEVCO comes under the authority of the Act on June 11th.

But again, I would suggest that those responsibilities are primarily retained by the corporation so perhaps that's a question that the corporation would be in a better position to answer than I would be.

THE CHAIRPERSON: No, I was just curious in terms of other remediations at other DEVCO sites in Cape Breton. I understand that there has been -- that Public Works does carry out consultation information program when you get involved in those. Is that correct?

MR. SWAIN: Yeah, I understand they are but I don't think I'm in a position to be able to explain how frequent they are or the nature or what they go through in planning them or how they, I guess, connect to the community. So I guess I feel a little bit uncomfortable in providing that information to the panel.

THE CHAIRPERSON: And nobody else at your

table has that information? I'd be very interested in receiving that as some background information. Would you be able to -- or would you be willing to provide that?

MR. SWAIN: Sure.

THE CHAIRPERSON: As an undertaking?[u]

MR. SWAIN: No, I can make sure that we connect with the unit that essentially is providing that service and get some ---

THE CHAIRPERSON: A simple one page or two page summary would be just sufficient.

MR. SWAIN: Yeah, no problem.

THE CHAIRPERSON: Thank you very much. I think that -- oh, yes, Mr. Marmon, one more question.

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

--- QUESTIONED BY MR. RON MARMON

MR. MARMON: Thank you, Madam Chair. There seems to be an automatic assumption that a mobile -- that all mobile incinerators are temporary incinerators. My understanding of a mobile -- is that a mobile incinerator can be licensed as a permanent facility provided all the regulations are met. However last night we had a definition of a temporary incinerator as one that's in operation in days or months. And my question to the Public Works is what do you consider a

two to five year operation? Would that be considered a mobile or a temporary -- or a temporary or a permanent installation?

MR. SWAIN: I guess I'm going to revert back to the Memorandum of Agreement now and the requirement of the Memorandum of Agreement which refers to that and it speaks to high temperature incineration in the single use dedicated facility. The exact description of what may be being proposed or what the options are for this particular facility may be better left in the hands of the Proponent to answer.

MR. MARMON: You can see where I'm asking that question because there's a very great difference in meaning to the residents and -- that I represent because if it's deemed a temporary incinerator we don't know how many metres it can be from our houses exactly. But if it's deemed a permanent -- comes under the definition of a permanent facility as we feel, two to five years should be considered a permanent facility.

And I have assurances this morning from Public Works that the most stringent of guidelines would be followed and as such the 1,500 hundred metre standback distance would come into effect.

THE CHAIRPERSON: Well, I think that these questions are valid questions and we need to pursue them

with the regulators. So we will be able to do that in the coming days. So thank you very much.

MR. MARMON: Thank you, Madam Chair.

THE CHAIRPERSON: I would like to thank everyone. I think this concludes our afternoon's questioning. Thank you very much for coming back to answer questions. And we will return here tomorrow and I don't know when we're going to return. We come back at 9:00. All right. Sorry, I apologize. I've just been reminded. I did say that I would come back to the Tar Ponds Agency for any additional questions or comments. Do you have anything more at this point?

MR. POTTER: Not at this point. I do appreciate the offer very much.

THE CHAIRPERSON: Okay. You're welcome. So we will return tomorrow morning at 9:00 a.m. Thank you very much.

(ADJOURNED TO THURSDAY, MAY 4, 2006 AT 9:00 A.M.)

CERTIFICATE OF COURT REPORTERS

We, Philomena Drake, Ruth Bigio, Sandy Adam, Gwen Smith-Dockrill and Janine Seymour, Court Reporters, hereby certify that we have transcribed the foregoing and that it is a true and accurate transcript of the evidence given in this Public Hearing, SYDNEY TAR PONDS AND COKE OVENS SITES REMEDIATION PROJECT, taken by way of digital recording pursuant to Section 15 of the Court Reporters Act.

_____

Janine Seymour, CCR

Philomena Drake, CCR

Sandy Adam, CCR

Ruth Bigio, CCR

Gwen Smith-Dockrill,CCR

Wednesday, May 3, 2006 at Halifax, Nova Scotia