

**Donkin Export Coking Coal Project
Federal-Provincial Environmental Assessment Agreement**

This Agreement is made in duplicate

AMONG

Her Majesty the Queen in Right of the Province of Nova Scotia
as represented by the Minister of Environment, hereinafter referred to as "NSE"

OF THE FIRST PART

AND

Her Majesty the Queen in Right of Canada
as represented by the Canadian Environmental Assessment Agency, hereinafter referred to as the "Agency"

OF THE SECOND PART

Whereas NSE may, pursuant to section 47 of the Nova Scotia *Environment Act*, enter into an agreement with the Agency to conduct a joint environmental assessment review where the proposed undertaking is also subject to review requirements of Her Majesty in right of Canada.

Whereas the Agency may, pursuant to subsection 12(4) of the *Canadian Environmental Assessment Act*, cooperate with NSE respecting the environmental assessment where the proposed undertaking is also subject to the review requirements of NSE.

Whereas the joint assessment allows the Parties (the Agency, NSE and their delegates) to coordinate the environmental assessment and adopt, for the purposes of the review, part of their respective regulatory procedures for environmental assessment, including time frames.

Whereas under the *Establishing Timelines for Comprehensive Studies Regulation of the Canadian Environmental Assessment Act*, the Agency has 365 days from the posting of the Notice of Commencement on the Canadian Environmental Assessment Registry Internet Site (CEARIS) to the posting of the comprehensive study report for public comment.

Whereas Xstrata Coal Donkin Management Limited (the Proponent), proposes to construct and operate an underground coal mine, processing plant and related coal transportation system at Donkin, Cape Breton County, Nova Scotia (the Project).

Whereas under Nova Scotia's, *Environmental Assessment Regulations* made under the *Environment Act*, the proposed Project has been determined to be a Class I undertaking. Under the *Regulations*, the proponent must register the proposed Project for an environmental assessment.

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Whereas the Agency has determined that a comprehensive study type of environmental assessment is required pursuant to paragraph 5(1)(d) of the *Canadian Environmental Assessment Act* because consideration is being given to issuing the following approvals, permits or authorizations for the purpose of enabling the Project in whole or in part:

- Fisheries and Oceans Canada (DFO) authorization(s) under section 32 and subsection 35(2) of the *Fisheries Act* with respect to the marine infrastructure associated with the construction of the barge load-out facility and transshipment mooring;
- Transport Canada (TC) authorization under subsection 5(2) of the *Navigable Waters Protection Act* (NWPA) with respect to the marine structures at the barge load-out facility and transshipment mooring;
- Natural Resources Canada (NRCan) authorization under paragraph 7(1)(a) of the *Explosives Act* with respect to the storage of explosives on site; and
- Environment Canada (EC) Disposal at Sea authorization under subsection 127(1) and subsection 129(3) of the *Canadian Environmental Protection Act* with respect to the Project, if construction of the barge load-out facility requires dredging and ocean disposal of the dredged material.

The Agency will exercise the powers and perform the duties and functions of the responsible authority until the comprehensive study report is provided to the Minister of the Environment and the Agency publishes a notice for public consultation on the comprehensive study report.

The joint assessment will commence upon the Proponent's submission of the EIS/Registration Document. The Parties have established the following target timelines:

- Upon the Agency determining that the EIS/Registration Document meets the EIS Guidelines, the Parties will take no more than seven (7) days to commence a public comment period.
- The Parties will conduct a joint 60-day public comment period. NSE will be consulting on the EIS/Registration Document and the Agency will be consulting on a Plain Language Summary of the EIS/Registration Document, but will also accept comments on the EIS/Registration Document.
- The Parties agree to strive for a maximum of 16 weeks between posting of the comprehensive study report on the CEARIS for public comment and the Provincial and Federal Ministers of Environment announcing their respective environmental assessment decisions.

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Despite this Agreement, the Parties shall retain their respective legislative decision-making authority with respect to the proposed Project.

The Parties are committed to consulting with the Mi'kmaq in accordance with the Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference.

The Parties agree to consult with each other during the environmental assessment process and prior to announcing their respective decisions.

The Parties may amend this Agreement, subject to acceptance by both Parties. A Party, without the consent of the other Party may, upon thirty (30) days written notice, withdraw from this Agreement and complete an independent environmental assessment.

This Agreement is not intended to be a legally binding instrument or give rise to any legal rights not otherwise held by the Parties.

This Agreement may be executed in duplicate counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same original agreement.

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S. J. Snook

Sara Jane Snook
Deputy Minister
Nova Scotia Environment

DEC 09 2011

Date

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E. Feldman

Elaine Feldman
President
Canadian Environmental Assessment Agency

JAN 04 2012

Date