EXHIBIT NL-14

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(BOTWOOD MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites at Botwood which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Botwood sites which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered your arguments and supporting documents even if all of them are not specifically referred to herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out the grounds of appeal and deal with them in turn. If I do not specifically address a ground of appeal or an argument, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Botwood Order cannot be precluded by the CCAA proceedings or by the Orders issued within those proceedings. In any event, neither the Initial Order, nor any order made in the CCAA proceedings to date, preclude the Botwood Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone…" against ACI.

13. However, that section of the Initial Order must be read in light of section 18, which reads:

> **[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.**

14. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

> **[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:**
>
> **[10.1] ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed;**

15. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

16. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of six pages of detailed arguments supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

It is clear from the foregoing that ACI knows the case it has to meet, and has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Botwood Order refers to the sites at Botwood which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Order is not improperly purposed, unreasonable, nor made in bad faith*

The Botwood Order is neither improperly purposed, unreasonable, nor made in bad faith. ACI was asked to provide ESA reports for the Botwood site, among others, as well as an update on the status of the remediation work at the site. ACI has refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of the assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I issued the Order.

The purpose of the Order is to rehabilitate the site. The Botwood site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

17. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment", of ACI nor was the Order made for a collateral purpose. ACI was asked to provide the Province with ESA and progress reports, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

18. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

19. ALLEGATION THAT THIRD PARTIES CAUSED OR ARE CAUSING CONTAMINATION

ASARCO/Grand Falls Central Railway Company/Town of Botwood/Canada Post

The definition of "person responsible" in the Act is very broad and it includes an owner, a previous owner or a person who has had management or control of a substance or thing. ACI is clearly a "person responsible" and the Order was made against it for that reason. The fact that other parties may also be "persons responsible" and also subject to obligations under the Act does not relieve ACI of its obligations.

20. ALLEGATION THAT THE CRA REPORT IS FLAWED

You state that the CRA Report is severely flawed in nine particular instances. My comments in response to some of the issues you have raised are set out below:

(a) the CRA Report fails to segregate or distinguish between the ore shipping and paper/mill shipping port operations at Botwood, and erroneously combines these operations in assessing areas of concern and suggested remedial actions, erroneously attributing to ACI the fault and responsibility for all;

The CRA Report was prepared in accordance with CSA Standards Z768-01 and Z769-00. It identifies current and former properties associated with ACI's storage and shipping operations in the Town of Botwood or properties that may have been adversely impacted by those operations;

(b) the CRA Report fails to distinguish between lands owned or operated by ACI and those owned or occupied by third parties, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from

ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(c) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics.

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(d) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, *VOCs, PAHs, PCBs, and general chemistry to:*

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).*

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(f) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Report, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation." ACI refused to provide CRA with any information regarding ACI's operations at the ACI Sites which may have corrected or identified the "false or erroneous information" upon which ACI claims that CRA relied.

(g) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures ("SOPs") to ACI and ACI's environmental consultant, AMEC Earth and Environmental ("AMEC"). CRA's SOPs are designed to guide CRA field staff to complete tasks appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(h) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA *validated the data included in the CRA Reports using standard data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.*

21. ACI IS A PERSON RESPONSIBLE

"Person responsible" is defined in section 2(x) of the Act.

(x) "person responsible" means

(i) the owner of a substance or thing,

(ii) the owner or occupier of land on which an adverse effect has occurred or may occur,

(iii) the owner or operator of an undertaking,

(iv) a previous owner of a substance or thing,

(v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,

(vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or

(vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner". I have not drawn a distinction between ACI or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

In addition, while you deny that ACI is a "person responsible", I note that by correspondence dated December 16, 2007 to my Department, ACI advised that, in 2006, a Phase I ESA was conducted by Jacques Whitford on behalf of ACI on the "Former Railway Line, Botwood to Grand Falls" the "Botwood site" and the "Caustic Storage Tank". In 2007, a Phase II Environmental Site Assessment was conducted on the rail line and the Botwood site. The correspondence concludes:

These projects were conducted and the results are under review to assist in the development of a long term operational plan to minimize any potential impacts that may exist. ACCGF will use the information collected to assist in planning of these sites for any required decommissioning or restoration if needed. ACCGF will update you of any changes, programs or activities we wish to undertake in these areas.

22. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence. Throughout its dealings with ACI, the Province has taken steps to have ACI comply with all applicable legislation at the Botwood site. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act.* Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act.* I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC **APPELLANT**

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION **RESPONDENT**

DECISION ON APPEAL
(BUCHANS MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **<u>January 15, 2010</u>** for all sites at and adjacent to the Buchans site which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) close all landfills identified by CRA in its ESA in accordance with provincial requirements, by **<u>January 15, 2011</u>**.

   iii) complete the approved site remediation actions by **<u>January 15, 2011</u>** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iv) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Buchans site which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered all of your arguments and the supporting documents you provided, even if I have not specifically referred to all of them in these reasons. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out the grounds of appeal and deal with them in turn. Please note that the fact that an argument or ground of appeal is not mentioned in these reasons does not mean that I did not consider it, or that I consider it relevant, or that I accept it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Buchans Order cannot be precluded by the CCAA proceedings or by the orders made within those proceedings. In any event, neither the Initial Order, nor any other order made in the CCAA proceedings to date, precludes the Buchans Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone..." against ACI.

However, that section of the Initial Order must be read in light of section 18, which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

13. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[10.1] ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed;

14. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

15. NATURAL JUSTICE

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of nine pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

As is clear from the foregoing, you know the case you have to meet, and you have been afforded an opportunity to respond.

(b) *Reasons were provided*

The Buchans Order refers to the sites at Buchans which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is well known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Buchans Order is not improperly purposed, unreasonable, nor made in bad faith*

The Buchans Order is neither improperly purposed, unreasonable nor made in bad faith. ACI was asked to provide ESA reports for the Buchans site, among others, as well as an update on the status of the remediation work at the site. You have refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of this assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the site. The Buchans site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

16. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an order made for a collateral purpose. ACI was asked to provide the Province with ESA reports and reports on the status of the remediation work at the Buchans site, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

17. CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

18. THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case, ACI, would fulfil its legal obligations to remediate the contamination at the Buchans site.

19. MINISTER "FUNCTUS OFFICIO"

You have argued that I am now "functus officio" because I made a decision on July 24, 2009 to stay the Order I had issued on May 29, 2009.

The Act gives me the authority to issue the Order. Furthermore, Clause 9 of my decision to stay the Order issued on May 29, 2009 states that the stay does not prejudice my authority pursuant to the Act to issue further Orders within my jurisdiction.

I should also point out that my May 29, 2009 Order dealt specifically with the Tailings Spill Area in Buchans while the November 12, 2009 Order deals with all sites identified in the ESA prepared by CRA. Given that CRA was subsequently retained to undertake an independent environmental assessment of all ACI sites, it was prudent to stay the Order pending the collection of that information.

20. **OWNERSHIP BY ACI**

You assert that you are neither the legal nor the beneficial owner of the land to which the Ministerial Order pertains or to the tailings in the Buchans area. In support of that assertion you point to three instruments which you say divested you of all of your interests therein.

First, based on the definition in the Act of "person responsible", the current ownership status of ACI with respect to the Buchans site does not matter, and does not serve to relieve ACI of its environmental obligations.

Second, between at least 1991 and 2008, ACI has consistently acknowledged its responsibility with respect to the Buchans site.

In November of 1991, ASARCO and Abitibi-Price Inc., ACI's predecessor, entered into a "Environmental Compliance Schedule (Buchans Co-Tenancy)" (the "Compliance Schedule"), which is included at Tab M of your supporting documents. The other parties to the Compliance Schedule were Environment Canada and the Newfoundland Department of Environment & Lands. The Compliance Schedule refers to ASARCO and Abitibi-Price Inc., collectively, as the "owners".

Pursuant to the Compliance Schedule, ASARCO, on behalf of the Co-Tenancy, filed quarterly reports with Environment Canada and the Province, as well as periodic reports on behalf of the Buchans Co-Tenancy, on matters related to the environmental condition of the site.

In July of 2006, after ASARCO filed for bankruptcy protection in the United States, ACI submitted, to Environment Canada, and to the Department of Environment and Conservation of the Province, what was called a "Buchans Mine Action Plan Towards Environmental Compliance and Closure" (the "Action Plan").

In August of 2008, ACI wrote to the provincial Department of Environment and Conservation to indicate that Abitibi had retained AMEC Earth & Environmental ("AMEC") to conduct a Phase I ESA at the Buchans site to "identify potential areas of concern ("AOCs") posed by the past mining operations at the above-mentioned location (the "Site")". Abitibi further stated that "As part of the Phase I ESA, AMEC will also perform a preliminary risk screening of each AOC to determine the need for subsequent Phase II ESA work. The risk screening will identify if there is any potential for exposure and impact to human health and/or to the environment. The results of this screening assessment, as well as recommendations for next steps, as appropriate, will be included in a Phase I ESA report, to be submitted to NLDOEC for review and concurrence."

On December 11, 2008, this Department received from Denis LeClerc, Vice President, Sustainability and Environment of your company a letter concerning "Status of the Buchans Tailing Spill Area (TSA) Remediation Project". In that correspondence he wrote, in part:

"Scheduling of the design and planning for project implementation then became an exercise with an implementation start-up date of late spring 2009. Actual start date would be dependent on weather and spring runoff conditions. Such a start-up would also provide sufficient time to complete the capping and vegetation and allow time for the vegetation to develop before the end of the autumn growing season."

Concerning the timing for the work he wrote:

- *"AMEC completed the design and submitted it to ACI in December 2008.*
- *ACI to submit the proposed design to the Departments of Environment and Conservation for approval in Q1 2009; to Natural Resources for their concurrence in Q1 2009.*
- *Requests for applicable permits to the Town of Buchans will be timed with pre-construction activities as needed.*
- *ACI to entertain bids for implementation of the project during first half of 2009.*
- *ACI to award the contract in time to begin the construction as planned."*

I conclude from these documents and this correspondence that at least until December, 2008, ACI accepted responsibility for remediation of the contamination released or permitted to be released by its operations, regardless of its ownership of the site and regardless of the role of another person in the operations. It is obvious as well that a detailed plan was in place to deal with the contaminants in the Tailings Spill Area. I am advised that in 2008 you carried out an extensive clean up of the Mucky Ditch in Buchans including the removal of sediment and the placing of rip rap. These actions are indicative of your view as to what rights and obligations you have with respect to the Tailing Spill Area.

21. ALLEGED INABILITY TO COMPLY DUE TO BUCHANS RIVER LTD/DR. JOHN TUACH/ATLANTIC BARITE LIMITED

You argue that Buchans River and Dr. John Tuach are the holders of exclusive rights to explore for and obtain a mining lease in the Buchans area pursuant to various Map Staked Licences. You also assert that Atlantic Barite Limited is the holder of exclusive mining rights respecting barite at Buchans pursuant to two mining leases and that to comply with the Order would require ACI to interfere with such rights and violate the *Mineral Act.*

The rights granted to the third parties mentioned above do not detract in any way from your obligation under the Act. The rights granted to these parties do not include the right to interfere with environmental remediation.

Moreover, Atlantic Barite Limited, which is a seasonal operation, is fully aware that remediation work is necessary in Buchans and that it would be carried on while they were operating. For example, in the Fall of 2008, my department wrote Atlantic Barite Limited requesting, among other things, "A statement of how ABL will accommodate Abitibi's actions to remediate the tailings pond including actions that may hinder the barite mining process." Atlantic Barite Limited verbally assured my department that they would not hinder efforts to remediate the ponds and dams.

The Province is also aware of negotiations between Buchans River Ltd and you which resulted in Buchans River Ltd agreeing that you could proceed to remediate and cap the Tailings Spill Area. I am advised that Buchans River Ltd. is now owned by Royal Roads Corp. In correspondence to the Province dated July 9, 2009 G. Will Felderhof, President and Chief Executive Officer of Royal Roads Corp. wrote, in part:

> ***In follow up to previous correspondence regarding the proposed solutions for the tailings spill in Buchans, I would like to reiterate that Royal Roads has no objections to Abitibi Bowater capping the tailings spill area.***

This letter makes it abundantly clear that Royal Roads has no difficulty with you doing whatever work is necessary to cap the Tailings Spill Area.

22. ALLEGED ERRORS IN BUCHANS MINISTERIAL ORDER

(a) *ACI is a person responsible*

Even if ACI was not an operator of the mine at Buchans, it is a "person responsible" pursuant to the *Environmental Protection Act*. "Person responsible" is defined in section 2(x) of the Act.

> (x) "person responsible" means
>
> (i) the owner of a substance or thing,
>
> (ii) the owner or occupier of land on which an adverse effect has occurred or may occur,
>
> (iii) the owner or operator of an undertaking,
>
> (iv) a previous owner of a substance or thing,
>
> (v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,

(vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or

(vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are "an owner". I have not drawn a distinction between ACI or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

(b) *ACI's obligation to remediate exists regardless of releases from Atlantic Barite Limited and the Town of Buchans*

You argue that the release complained of in the Ministerial Order is being caused in whole or in part by the activities and operations of Atlantic Barite Limited and the Town of Buchans. The Province counters that any such discharge or release would not relieve you of your obligation to remediate. Atlantic Barite Limited's operations at the tailings pond in Buchans are regulated by a Certificate of Approval issued by my Department. Atlantic Barite's operations are being monitored on a regular basis by the Department through the terms and conditions of the certificate as well as periodic inspections. Atlantic Barite Limited has an operational plan in place that includes regular inspections.

(c) *ACI's obligation to remediate exists regardless of releases from activities of Government*

On August 29, 2009, you advised the Province that during a recent tropical storm water spilled over the tops of the dams at Buchans. Overtopping of a dam may cause erosion and possible dam failure. You also advised that you would not be addressing the issue.

To avoid a possible dam failure, and a consequent release of hundreds of thousands of tons of tailings downstream, the Province decided to lower the water level in the dam and prohibit public access. On September 21, 2009 a local contractor was engaged to lower the water level and erect a gate. Without the knowledge of the Province, the contractor decided to install a culvert in the dam to lower the water level. An inspection was completed by a consultant on behalf of the Province on October 12, 2009. The consultant recommended installation of a larger culvert that would lower the water three feet below the dam crest in the tailings pond. The new culvert has now been installed. As is obvious, those were emergency repairs done to prevent a potential failure of the dam structures.

You knew that the dams could potentially fail yet you chose to do nothing. Nothing that has been done by the Province in relation to the dam structure relieves ACI from its obligations.

23. ALLEGED ERRORS IN CRA REPORT

Concerning the CRA Report which accompanied the Order, you state that the Report is severely flawed in ten particular instances. My responses to some of the issues you raise are as follows

(a) *the CRA Report fails to distinguish between lands or mineral rights previously owned by ACI and those owned, occupied or operated by third parties, erroneously attributing to ACI the fault and responsibility for all;*

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) *the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals, particularly in areas with proximity to the known former Buchans mine site where such background mineralization is to be expected naturally;*

The CRA Reports were prepared, to the extent possible, in accordance with the CSA Standards[1]. An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.

CRA collected background soil samples for metals analyses. The concentrations of metals in the soil samples collected from the potential areas of environmental concern (PAOCs) that CRA identified were greater than the concentrations of those same metals in the background soil samples.

(c) *the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;*

In the absence of CCME criteria specific to a non-potable groundwater

[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.

condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(d) *the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;*

CRA compared groundwater sample results to the most applicable criteria.

> As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry toCCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

The purpose of CRA's Phase II report was to further assess environmental liabilities of the Buchans Site by assessing the nature and extent of contamination. There were no protective barriers to prevent the direct migration of contaminated groundwater into adjacent surface water or to prevent potential contaminants from impacting the surface water.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) *the CRA Report contains voluminous testing results from within authorized dump sites, in may cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization date (which by its nature is expected to exceed non-applicable limits) and surrounding soil, water and groundwater data which, if it exceeded said limits, could lead to the conclusion that the waste management units sampled are potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;*

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the disposal areas and landfills have the potential to migrate outside of the disposal areas and landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." CRA used the appropriate criteria to evaluate surface water and groundwater impacts are appropriate.

CRA did not dispose of wastes in these landfills and used accepted practices to investigate them

(f) *the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;*

The CRA report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(g) *the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;*

As noted in the CRA Report and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

(h) *the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and*

CRA provided copies of its Standard Operating Procedures (SOPs) to ACI and ACI's environmental consultant, AMEC. CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(i) *there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.*

CRA provided copies of its SOPs to ACI and ACI's environmental consultant, AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.

24. OCCUPATIONAL HEALTH AND SAFETY ORDERS

You point out that ACI successfully appealed against Orders of the Occupational Health and Safety Division issued under the *Occupational Health and Safety Act*. The letter from the Department dated October 7, 2008 makes it clear that the appeal succeeded because the Department's investigations concluded that the mining properties at Buchans were no longer deemed to be "workplaces" as defined under the Act and not because of any of the factors as outlined in paragraph 5 of your Notice of Appeal.

25. THE ORDER IS NOT BARRED BY LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

In November 1991 ASARCO and ACI entered into the Compliance Schedule. The Compliance Schedule sets out, among other things, the dates by which certain remedial actions were to be taken. ASARCO did file quarterly reports as well as other reports on the environmental condition of the site. Soon after signing the Compliance Schedule, however, the Co-Tenancy asked for extensions to the deadlines in the Compliance Schedule because the remediation work required by the Compliance Schedule had not been completed. The last request was for an extension to June 2009.

In July 2006, ACI submitted the Action Plan.

In August 2008, ACI wrote to the Department to indicate it had retained AMEC to conduct a Phase I ESA at Buchans. AMEC was also to perform a preliminary risk screening to determine the need for subsequent Phase II ESA work. The Phase I ESA and the results of the screening assessment were to be submitted by ACI to my Department.

As of January 29, 2010 none of the work or studies proposed in the Compliance Schedule, the Action Plan or the August 2008 letter have been filed with my Department.

Throughout its dealings with ACI the Province has taken steps to have ACI comply with all applicable legislation as well as the terms and conditions of its various approvals. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period between 1928-1984 or alternatively prior to November 14, 1994 the time by which you argue you had divested yourself of all surface, mineral and tailings rights in the Tailings Spill Area.

I reject your argument. In making the Order I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(GRAND FALLS-WINDSOR MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

   i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **<u>January 15, 2010</u>** for all sites at Grand Falls-Windsor which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

   ii) complete the approved remediation actions by **<u>January 15, 2011</u>** or by another date as may be agreed upon with the Department of Environment and Conservation.

   iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

iv) close all landfills associated with the pulp and paper mill operations at Grand Falls-Windsor as identified by CRA in the ESA, based on provincial requirements, by **January 15, 2011.**

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Grand Falls-Windsor sites which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered all of your arguments and supporting documents, even if all of them are not specifically referred to herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out these grounds of appeal and deal with them in turn. If a particular ground of appeal or argument is not addressed, it does not mean that I did not consider it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Grand Falls-Windsor Order cannot be precluded by the CCAA proceedings or by the orders made within those proceedings. In any event, neither the Initial

Order, nor any of the Orders issued in the CCAA proceedings to date, preclude the Grand Falls-Windsor Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone..." against ACI.

13. However, that section of the Initial Order must be read in light of section 18 which reads:

> **[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.**

14. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

> **[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:**
>
> **[10.1] ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed;**

15. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

16. NATURAL JUSTICE

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of six pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, ACI knows the case it has to meet, and it has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Grand Falls-Windsor Order refers to the sites at Grand Falls-Windsor which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Grand Falls-Windsor Order is not improperly purposed, unreasonable, nor made in bad faith*

The Grand Falls-Windsor Order is neither improperly purposed, unreasonable, nor made in bad faith. ACI was asked to provide ESA reports for the Grand Falls-Windsor site, among others, as well as an update on the status of the remediation work at the site. ACI has refused to do so. Accordingly, the Province had no way to know the environmental condition of the site, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of that assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the site. The Grand Falls-Windsor site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order. The Order is within my legislative authority under the Act.

17. THE GRAND FALLS-WINDSOR ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an Order made for a collateral purpose. ACI was asked to provide the Province with ESA reports and reports on the status of the remediation work at the Grand Falls-Windsor site, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

18. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

19. THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case, ACI, would fulfill its legal obligations to remediate the contamination at the Grand Falls-Windsor site [NTD: Sometimes, the Minister uses "site" and other times "sites"- this should be consistent.]

20. ACCC NOT ACI OPERATOR

You have argued that the Order is in error in asserting that "ACI operated and was the person responsible for a pulp and paper mill at Grand Falls-Windsor, Newfoundland and Labrador until March, 2009, and the person responsible for substances at the Grand Falls-Windsor mill", which assertion is demonstrably wrong in respect of the timeframe December 1, 2001 until Government's expropriation of the Grand Falls mill, as evidenced by Certificates of Approval issued to ACCC, wherein ACC is identified as the operator of the mill.

I reject your argument. As a former owner and/or operator, ACI remains a "person responsible" under the Act. I have not drawn a distinction between ACI, ACCC or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

21. THE ABITIBI-CONSOLIDATED RIGHTS AND ASSETS ACT DOES NOT RELIEVE ACI OF ITS OBLIGATIONS

You have argued that pursuant to the *Abitibi-Consolidated Rights and Assets Act*, the Province is vested with all surface and real property rights in the Grand Falls-Windsor site and to comply with the Order would require ACI to interfere with such rights without right, title or authority to do so.

I reject this argument. The *Abitibi-Consolidated Rights and Assets Act* does not relieve ACI of its obligations under the Act. Section 13 of the *Abitibi-Consolidated Rights and Access Act* reads: "Nothing in this Act affects the liability of Abitibi-Consolidated related to undertakings made by it in relation to environmental remediation".

As a "person responsible", you have an obligation to respond to the Order to begin remediation work at Grand Falls-Windsor. For the avoidance of any doubt, however, the Province will not interfere with nor hinder any efforts by Abitibi to remediate the Grand Falls-Windsor sites.

22. ALLEGED ERRORS IN THE CRA REPORT

You state that the CRA Report is severely flawed in ten particular instances. My comments in response to some of the issues you have raised are set out below:

(a) the CRA Report fails to distinguish between lands operated by ACI and those operated by third parties including Abitibi-Consolidated Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) CRA made no attempt to assess natural background levels of potential contaminants such as arsenic before declaring site-wide impacts from such constituents;

The purpose of CRA's Phase II report was to further assess potential areas of environmental impairment at the Grand Falls Site by assessing the nature and extent of contamination. Background concentrations of specific chemical of concern, such as arsenic were not determined for the Grand Falls Site because the assessment of natural background concentrations of potential contaminants is beyond the scope of a typical Phase II ESA. CRA completed the environmental assessment in accordance with the CSA standards.

(c) CRA has identified the future demolition of buildings and structures as an area of concern (AOC) and included this in the scope of its environmental assessment. There are currently no such activities ongoing at the Grand Falls mill and thus, no contamination occurring from such activity;

The presence and/or potential presence of contaminants within and beneath the buildings at the Grand Falls Site is an area of concern. ACI refused to allow CRA to collect samples of building materials to confirm whether building materials at the Site contained hazardous substances. CSA Standard CZ769 includes "the collection of samples of structures suspected of containing substances of concern (e.g., asbestos, urea formaldehyde, lead, radionuclides, and PCBs)." The presence of these substances of concern within a building represents a potential risk to human health.

(d) CRA has deliberately taken waste samples from within authorized landfills and compared the results to soil quality guidelines, yet not reporting their results as waste characterization data but as soil results, thereby reporting limit exceedances from within waste management units specifically created and authorized to permanently dispose of such materials and protect the surrounding environment;

Irrespective of the types of samples collected and analyzed, authorized landfills must be closed in accordance with the approval issued or, in the absence of such closure detail, the Provincial guidelines for landfill closure.

With the exception of Chicco's Landing, none of the other five landfills (that CRA identified) were constructed with proper liners. Since there were no landfill liner systems under the landfill areas to prevent contaminants from impacting the underlying native soil and the surrounding environment, contaminants within the waste and fill material disposed can move freely into the underlying native soil.

The waste criteria to which ACI refers were developed to consider the risks and hazards of a waste material when being disposed of at a lined landfill. With the absence of liners at four of ACI's five landfills, characterizing the material as waste is inappropriate and does not consider the proper risks and hazards associated with ACI's disposal practices. CRA therefore, compared the analytical results to applicable soil criteria, as the underlying and surrounding soil will be directly impacted by the contamination within the landfill.

(e) CRA has deliberately taken water samples from within authorized landfills and compared the results to surface water quality guidelines, yet not reporting their results as waste characterization data but groundwater results, thereby leading to the same erroneous conclusions as above;

The Landfill Guidance Document states that the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." The criteria CRA used to evaluate surface water and groundwater impacts are appropriate for the purpose stated.

(f) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(g) the CRA Report, when comparing groundwater results to CCME water quality guidelines for freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the sampling well. In so doing, the CRA Report fails to consider natural attenuation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

CRA compared groundwater sample results to the most applicable criteria.

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).

CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(h) the CRA Report contains voluminous testing results from within authorized dump sites, in may cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization data (which is expected to exceed non-applicable limits) and surrounding soil, water and groundwater date which, if it exceeded said limits, could lead to the conclusion that the waste management unit sampled is potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the landfills have the potential to migrate outside of the landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." Therefore, the criteria CRA used to evaluate surface water and groundwater impacts are appropriate.

CRA did not dispose of wastes in these landfills and used accepted practices to investigate them.

(i) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of the discharge of substances in amounts that, in my opinion, cause or may cause an adverse effect.

(j) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Reports and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

ACI refused to provide CRA with any information regarding ACI's operations at the ACI sites, which may have corrected or at least identified the "false or erroneous information" upon which ACI claims that CRA relied.

(k) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures ("SOPs") to ACI and ACI's environmental consultant, AMEC Earth and Environmental ("AMEC"). CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

CRA installed permanent steel outer casings when installing monitoring wells through overburden into underlying bedrock. The installation of an outer casing is the industry standard practice for the prevention of contaminant migration from overlying materials into deeper, uncontaminated groundwater.

(l) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false or erroneous limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Reports.

23. ACI IS A PERSON RESPONSIBLE

"Person responsible" is defined in section 2(x) of the Act.

> (x) "person responsible" means
>
> (i) the owner of a substance or thing,
>
> (ii) the owner or occupier of land on which an adverse effect has occurred or may occur,
>
> (iii) the owner or operator of an undertaking,
>
> (iv) a previous owner of a substance or thing,
>
> (v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,
>
> (vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or
>
> (vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner".

24. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence. Throughout its dealings with ACI the Province has taken steps to have ACI comply with all applicable legislation at the Grand Falls-Windsor sites. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(LOGGING CAMPS MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

    i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all logging camp sites, including adjacent property, which have been identified in the ESA prepared by CRA as having or likely to have exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, including the closure of all landfills in accordance with provincial requirements and the demolition of all structures on the logging camp sites.

    ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

    iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the sites.

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the logging camps which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered your arguments and supporting documents, even if I have not specifically referred to them herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out these grounds of appeal and deal with them in turn. If I do not address a particular ground or argument, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Logging Camps Order cannot be precluded by the CCAA proceedings or the orders made within those proceedings. In any event, neither the Initial Order, nor any of the Orders issued in the CCAA proceedings to date, preclude the Logging Camps Order.

12. Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "no right, legal or conventional, may be exercised and no

proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone..." against ACI. However, that section of the Initial Order must be read in light of section 18 which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

13. The Initial Order was amended by the Quebec Court on May 14, 2009. IN that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[10.1] ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed;

14. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

15. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of eight pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, ACI knows the case it has to meet, and has been afforded the opportunity to respond.

(b) *Reasons have been provided*

The Logging Camps Order refers to the sites which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Logging Camps Order is not improperly purposed, unreasonable, nor made in bad faith*

The Logging Camps Order is neither improperly purposed, unreasonable nor made in bad faith. ACI was asked to provide ESA reports for the Logging Camp sites, among others, as well as an update on the status of the remediation work at the sites. You have said that there are no ESA or other reports on the environmental condition of the Logging Camps sites. Accordingly, the Province had no way to know the environmental condition of the sites, and no way to know if ACI had fulfilled its obligations, requiring the Province to undertake an independent assessment. As a result of this assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I therefore issued the Order.

The purpose of the Order is to rehabilitate the sites. The Logging Camp sites have been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

16. THE ORDER WAS MADE IN THE ORDINARY COURSE

This is not "a targeted assessment" of ACI, nor an order made for a collateral purpose. ACI was asked to provide the Province with ESA and progress reports for the Logging Camps sites, but refused to do so. I therefore exercised the authority granted to me under the Act to issue the Order.

Section 99 of the Act gives me the authority to issue Orders. That section also provides a wide range of options as to what to include in such an Order. Each matter is considered on its own merits and, therefore, not all situations will necessitate the issuance of the same Order. The Order may vary with the circumstances. Where I believe on reasonable grounds that a person responsible has or will contravene the Act or the terms or conditions of an agreement, approval, etc. I may issue an Order. That is the ordinary course and it was followed in this instance.

17. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

18. THE ORDER IS NOT ABOUT IMPROVING VALUE OF GOVERNMENT PROPERTY

The Order that I have made is not about improving the value of Government's own property. As you are well aware, the definition of "person responsible" in the Act includes a previous owner of a substance or thing or a person who has had care, management or control of a substance or thing. I issued the Order so that the "person responsible", in this case. ACI, would fulfil its legal obligations to remediate the contamination at the Logging Camps sites.

19. THE ABITIBI-CONSOLIDATED RIGHTS AND ASSETS ACT DOES NOT RELIEVE ACI OF ITS OBLIGATIONS

You have argued that pursuant to the *Abitibi-Consolidated Rights and Assets Act*, the Province is vested with all surface and real property rights in the Logging Camps sites and to comply with the Order would require ACI to interfere with such rights without right, title or authority to do so.

I reject this argument. The *Abitibi-Consolidated Rights and Assets Act* does not relieve ACI of its obligations under the Act. Section 13 of the *Abitibi-Consolidated Rights and Access Act* reads: "Nothing in this Act affects the liability of Abitibi-Consolidated related to undertakings made by it in relation to environmental remediation".

As a "person responsible", you have an obligation to respond to the Order to begin remediation work at the Logging Camps sites. For the avoidance of any doubt, however, the Province will not interfere with nor hinder any efforts by Abitibi to remediate the Logging Camps sites.

20. ACCC NOT ACI OPERATOR

You have argued that it is apparent that ACI has not been the operator of the Logging Camps sites since at least 2001, by reference to the ACCC Certificates of Approval (included as tab N of your supporting documents), wherein ACCC is referred to as the operator of the Grand Falls-Windsor and Stephenville mills.

I reject your argument. The Act, at section 101, proves that orders made pursuant to section 99 are bindings on heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns of the person to whom it is directed. In any event, ACI, as a former owner and/or operator, remains a "person responsible" under the Act. Accordingly, I have not drawn a distinction between ACI, ACCC, or any of ACI's related companies in making the Order.

21. ALLEGED ERRORS IN CRA REPORT

Concerning the CRA Report which accompanied the Order you state that the Report is severely flawed in a number of particular instances. My comments (presented in italics) in response to some of the issues you have raised are as follows:

(a) the Logging Camps Ministerial Order asserts that ACI "operated approximately fifty logging camps in central Newfoundland and Labrador ... until March, 2009 and was the person responsible for these logging camps and the substances thereon", which assertion is demonstrably wrong for the following reasons:

(ii) the Logging Camps Ministerial Order incorrectly identifies fifty (50) logging camps as requiring remediation, whereas it is the opinion of ACI, supported by work undertaken by ACI's environmental consultants, AMEC Earth & Environmental, Inc. that the correct number of logging camps supporting Abitibi-Consolidated Company of Canada's former pulp and paper mill operations is actually more accurately thirty-two (32) logging camps. Specific examples of sites incorrectly identified by CRA as logging camps are as follows:

(A) CRA's suggested Flatwater Pond Camp was never a logging camp associated with ACI or Abitibi-Consolidated Company of Canada; it was operated by the predecessor company to the current operator of the Corner Brook pulp and paper mill;

(B) the suggested Pats Pond and Northwest Gander camps were transferred to independent third parties several years ago;

(C) the suggested Bomey Lake camp had been "squatted" upon for several years and used for nearby quarry operations (over the years, the quarry was operated by Cabot Granite, International

Granite, and Central Holdings Inc.); and

(D) CRA's suggested Exploits Dam logging camp was never a logging camp site but was rather part of the Millertown dam/hydro facility;

(b) in the CRA Report, CRA identified twenty-two (22) locations that pre-date mechanization and were thus used for various light, non-industrial activities, including temporary tent camps or scale offices, and it is ACI's assessment, supported by AMEC's opinion, that potential environmental risks associated with these locations, if any, would be minimal or immaterial;

(c) the Logging Camps Ministerial Order asserts that ACI is the person responsible for the release of substances into the environment in an amount which in the Minister's opinion causes an adverse effect, which assertion is demonstrably erroneous; as the Minister knows or ought to know, the releases complained of in the Logging Camps Ministerial Order and in the CRA Report referenced in the Logging Camps Ministerial Order were and are being caused in whole or in part by the activities and operations of third parties, as follows:

(i) a significant deficiency in the CRA Report is its failure to segregate third party activities from those which have resulted from true logging camp activities of Abitibi-Consolidated Company of Canada and its predecessors, many such former logging camp sites have, after dismantling and clean up, been used or occupied for other purposes by third parties, including seasonal fishing camps, snowmobile camps, cottages and other similar activities. Soil and other samples were taken by CRA at only six (6) such locations with no method of distinguishing whether results obtained were attributable to such subsequent activities or to the operation of the original logging camps, and because of this, in issuing the Logging Camps Ministerial Order based on the CRA Report, the Minister has no reasonable basis upon which to determine the degree, if any, to which ACI (even if it, contrary to the above submissions, was an operator of such camps) was a "person responsible";

(ii) the vast majority of the thirty-two (32) logging camps of which ACI is aware were closed well prior to March 2009, and in no cases were there prior reported environmental conditions, infractions or concerns, strongly suggesting that any of the substances released into the environment which are complained of in the Logging Camps Ministerial Order as "substances thereon" are the responsibility of third parties, and not of ACI or Abitibi-Consolidated Company of Canada;

(iii) the CRA Report specifically confirms, based on tis [sic] enquiries of the Department of Environment and Conservation ("DOEC") that there exist no past or pending environmental investigations or infractions pertaining to the Logging Camps;

(iv) the CRA Report identifies an area of concern, the former garage at the Rocky Brook Camp (ACI believes the user of this site to be the "Exploits Valley Snowmobile Association"); it is believed that that [sic] this third party group operates a recreational and commercial snowmobile service at the site, including a shelter that serves as a garage for storage, fuelling and repairing of snowmobiles and related equipment, all of which are likely sources of the Rocky Brook Camp contaminants complained of;

(v) the CRA Report identifies a number of former logging camps (i.e. Pamehoc Lake, Rocky Brook, Miguels Lake and Lake Ambose) as having private cabins located on site, all of which private cabins are likely sources of third party contaminants;

(vi) the lack of objectivity and targeted nature of the Logging Camps Ministerial Order and the CRA Report is best illustrated by reference to the Lake Ambrose logging camp discussed at section 2.2.3 of the Logging Camps Report. After noting earlier in the CRA Report that chainsaws and motorized vehicles (other than tractors used for wood hauling) were not used in the logging operations of ACI until the late 1950s (prior operations having been performed using horse and manpower) and after further noting the closure of this camp in the mid- 1950s, the CRA Report nevertheless attributes without evidence various readings of fuel contamination to ACI operations. The fact that the Lake Ambrose site is currently used recreationally and that there exist nearby cottages (whose occupants may use the site for dumping waste and other activities) is not considered in the CRA Report. Section 2.2.3.5 of the CRA Report notes, without comment, *"Portions of the Lake Ambrose Site have been developed for residential purposes and are currently occupied by dwellings."* As between harvesting operations which have not been carried out at this site for some 50 years and then used only horsepower and manpower, and current recreational dwellers with powerboats, snowmobiles, ATV's, automobiles and generators, the Minister and her purported environmental expert CRA chose the most likely source for the observed contaminations of waste oil, fuel and similar items as being ACI;

(vii) the CRA sampling program was limited to six (6) logging camps deemed to be representative of the entire logging operations over time, which in proportion is inaccurate given the large proportion of logging camps set up and dismantled prior to the advent of mechanized forest practices; and

(viii) CRA has erroneously identified several dump sites within the limits of the suggested logging camp sites, which suggest adverse environmental conditions near areas currently occupied by cottage dwellers. The presence of surficial litter and refuse, described in part as containing "general debris and scrap metal", is not indicative of the presence of logging camp landfills which for health, safety and hygiene reasons were established further away from living quarters, and which presence likely could have been caused, at least in part, by Third party dumping.

(a) (ii) CRA identified 50 former logging camps by completing a literature search, reviewing aerial photographs, and by interviewing former ACI employees.

(b) Based on interviews with former ACI personnel, mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. Road networks were constructed around the 1950s that allowed transport of wood product by trucks over woods roads from centralized loading areas to the pulp and paper mills in Grand Falls-Windsor and/or Bishop's Falls, NL. The use of tractors and trucks were likely part of camp's daily operations. Support infrastructure for camps and scale offices that pre-dated the introduction of pre-fabricated buildings in 1957 included the use of stove oil for heating appliances, kerosene for lanterns, and gasoline for tractors. Petroleum hydrocarbons to supply these camp commodities were typically stored in 205-Litre (L) drums. Therefore, it is likely that fuel impacts are associated with logging activities at this site.

(c) (i) The "third party" activities described in the comment are generally residential/recreational use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(ii) The fact that no past or pending environmental investigations or infractions have been identified by CRA does not mean that remediation is not necessary or required at the camps.

(iii) The "third party" activities described in the comment are generally residential/recreational use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(iv) The "third party" described in the comment, such as cabins, is generally residential use. CRA's analysis was focused on the practices related to the logging camps' operations and thus the impacts are attributable to that use.

(vi) *The time at which the Lake Ambrose Site was developed is uncertain; however, the historical records review and information provided by former ACI personnel indicate that logging camp operations ended in the mid-1950s after prolonged operations. Reportedly, the Lake Ambrose Site was a distribution hub for field supplies (materials, equipment, etc.) and personnel for other logging camps located in the vicinity of the Lake Ambrose Site and included a small gauge rail line from Millertown, which then extended to Harpoon.*

Mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. Support infrastructure for camps that pre-dated the introduction of pre-fabricated buildings in 1957 included the use of stove oil for heating appliances, kerosene for lanterns, and gasoline for tractors. Petroleum hydrocarbons to supply these camp commodities were typically stored in 205-Litre (L) drums.

Eventually, road networks were constructed around the 1950s that allowed transport of wood product by trucks over woods roads from centralized loading areas to the pulp and paper mills in Grand Falls-Windsor and/or Bishop's Falls, NL.

Since Lake Ambrose operated at least until the mid-1950s, the use of tractors and trucks were likely part of its daily operations. Lake Ambrose was also a distribution hub for field supplies to other camps in the area, including petroleum hydrocarbons that were stored in drums. Therefore, it is likely that fuel impacts are associated with logging activities at this site.

Fuel oil was used at camps prior to 1940 for heating and lighting equipment. Mechanization of the harvesting process reportedly began around the 1940s when tractors were being used to haul wood from the cut areas to central locations for transport across ponds/lakes and eventually rivers on logging drives. CRA noted any potential impacts from adjacent properties or as a result of current uses.

(vii) *CRA identified 50 former logging camps by completing a literature search, reviewing aerial photographs, and by interviewing former ACI employees. CRA assessed the logging camps based on the dates of operations so this issue is properly and completely addressed by the representative scope of work implemented at the 6 camps.*

(viii) *CRA identified dump sites at the logging camps through interviews with former ACI personnel, site inspections, and volume of debris observed at each site.*

CRA observed disposal areas and landfills at these camps and did not base its conclusions on the presence of surficial litter. The Province has previously ordered ACI to close landfills at camps and these closure orders were not *followed.*

(b) the CRA Report fails to distinguish between lands operated by ACI and those owned or operated by third parties, including Abitibi-Consolidated Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(c) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to:

- *Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).*

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

Further, the criteria adopted by the Province for non-petroleum-based contaminants are the Canadian Council of Ministers of the Environment (CCME) criteria and Health Canada criteria, which are both generic criteria applicable throughout Canada and, therefore, are also "not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics." The petroleum criteria used by the Province are the Atlantic Risk-Based Corrective Action (RBCA) Criteria and are applicable throughout Atlantic Canada. These *criteria are also not specifically adapted to the hydrogeological and geological characteristics of the Province.*

(d) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protecting of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to:

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria)..*

  CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(e) the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals in soil and groundwater;

The CRA Report was prepared, to the extent possible, in accordance with the CSA Standards[1]*. An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.*

(f) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects;

The CRA Report details evidence of discharges of substances in amounts that, in

[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.

my opinion, cause or may cause an adverse effect.

(g) the CRA Report relies, in certain instances, on false or erroneous information in respect of the sites which are targeted by the report;

As noted in the CRA Reports and consistent with CSA Standard CZ768, with respect to the Phase I ESAs, "CRA relied on information received from all parties as accurate, unless contradicted by field observations or written documentation."

ACI refused to provide CRA with any information regarding ACI's operations at the ACI Sites, which may have corrected or at least identified the "false or erroneous information" upon which ACI claims that CRA relied.

(h) the information on which the CRA Report is based was at times obtained through hazardous field sampling techniques, including drilling bore holes through likely self-contained and stable sites into groundwater below, which can contribute or cause contamination which did not previously exist; and

CRA provided copies of its Standard Operating Procedures (SOPs) to ACI and ACI's environmental consultant, AMEC Earth and Environmental (AMEC). CRA's SOPs are designed to guide CRA field staff to complete task appropriately and document the steps that CRA takes to prevent cross contamination into deeper geological units.

(i) there is consistently no reference to, and discussion of, potential sources of sample contamination that occurred during field sampling activities, potentially leading to the identification of false limit exceedances.

CRA provided copies of its SOPs to ACI and AMEC. CRA's SOPs document the steps that CRA takes to ensure that sample contamination does not occur. CRA validated all of the data included in the CRA Reports using standard laboratory data validation procedures. Where indications of field or laboratory sample contamination were identified, these are documented in the data tables and in the Data Validation Memoranda included in the Appendices to the CRA Report.

22. *ACI IS A PERSON RESPONSIBLE*

"Person responsible" is defined in section 2(x) of the Act.

(x) "person responsible" means

(i) the owner of a substance or thing,

(ii) the owner or occupier of land on which an adverse effect has occurred or may occur,

(iii) the owner or operator of an undertaking,

(iv) a previous owner of a substance or thing,

(v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,

(vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or

(vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not your are an "owner".

23. INAPPLICABILITY OF LIMITATIONS ACT / WAIVER / LACHES / ACQUIESCENCE

I reject your argument concerning waiver, laches or acquiescence has no merit. Throughout its dealings with ACI, the Province has taken steps to have ACI comply with all applicable legislation at the Logging Camps sites. At no time did the Province acquiesce in the deprivation of its rights.

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject this argument also. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

IN THE MATTER OF the Ministerial Order under the *Environmental Protection Act* Section 99 dated November 12, 2009 issued by the Minister of Environment and Conservation to Abitibi-Consolidated Inc;

AND IN THE MATTER OF the appeal of the said Ministerial Order by Abitibi-Consolidated Inc. Under Section 107 of the *Environmental Protection Act;*

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL
(STEPHENVILLE MINISTERIAL ORDER)

1. On November 12, 2009 I issued an Order against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:

    i) submit to the Department of Environment and Conservation for approval a detailed Remediation Action Plan by **January 15, 2010** for all sites on or adjacent to the pulp and paper mill operations at Stephenville property which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG.

    ii) complete the approved site remediation actions by **January 15, 2011** or by another date as may be agreed upon with the Department of Environment and Conservation.

    iii) once the Remediation Action Plan is approved by the Department of Environment and Conservation, file with the Department, on a quarterly basis, progress reports outlining in detail the work completed on the site.

iv) close all landfills and lagoons/impoundments associated with the pulp and paper mill operations at Stephenville as identified by CRA in the ESA, based on provincial requirements, by **January 15, 2011.**

2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.

3. You filed a formal Notice of Appeal with supporting reference documents on January 11, 2010.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.

5. No detailed Remedial Action Plan for all sites at and adjacent to the Stephenville sites which have been identified in the Environmental Site Assessment ("ESA") prepared by Conestoga-Rovers & Associates ("CRA") as having exceedances greater than the acceptable limits as outlined in the applicable provincial environmental legislation, Atlantic PIRI, CCME and CEQG, was received by the Department by January 15, 2010 nor to date. Neither has the Department received any applications for the necessary approvals for the work.

6. I have read your Notice of Appeal and reviewed and considered the supporting documents and all of your arguments, even if I have not specifically referred to all of them herein. I have considered the relevant section of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.

7. Under section 107 of the Act I can dismiss the appeal, allow the appeal or make another decision or order that may be made under the Act.

8. I am dismissing the appeal. Here are my reasons for that decision.

9. In your Notice of Appeal you appealed the Ministerial Order on a number of grounds. I will set out each ground of appeal and deal with each in turn. If a specific document or argument is not specifically referred to herein, it does not mean that I have not considered it, or that I consider it relevant, or that I agree with it.

ORDER OF THE QUEBEC SUPERIOR COURT

10. You argue that the Ministerial order is "precluded in law and has no force and effect by reason of the Order of the Quebec Superior Court dated April 17, 2009." This is a reference to the Initial Order made by The Honourable Mr. Justice Clement Gascon, J.S.C. in the CCAA hearings.

11. The Stephenville Order cannot be precluded by the CCAA proceedings or the orders made within those proceedings. In any event, neither the Initial Order, nor

any of the orders made to date in the CCAA proceedings, preclude the Stephenville Order.

Section 10 of the Initial Order in the CCAA proceedings imposed a stay and provided that "no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone..." against ACI. However, that section of the Initial Order must be read in light of section 18 which reads:

[18] ORDERS that the Petitioners and the Partnerships shall continue to carry on their business and financial affairs, including the business and affairs of any person, firm, joint venture or corporation owned by a Petitioner or in which a Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof.

12. The Initial Order was amended by the Quebec Court on May 14, 2009. In that First Stay Period Extension Order the Court wrote, in part:

[5] FURTHER AMENDS the second amended Initial Order to include the following paragraph:

[10.1] ORDERS that the aforementioned stay cannot be interpreted as to restrict or prevent Her Majesty the Queen, or her agents, from exercising powers, rights or duties in relation to matters involving public health, safety, security, public order or the environment against the Petitioners, the Partnerships, the Property, the Directors or others, providing that any financial or monetary fines or orders shall be stayed;

13. The Initial Order obligated you to carry on your business in a manner consistent with the commercially reasonable preservation thereof. Ignoring your obligations under the Act cannot be consistent with that obligation. The First Stay Period Extension Order makes it clear that the stay does not restrict the Province from, among other things, exercising rights it has under the Act to protect the environment of the Province.

14. **NATURAL JUSTICE**

(a) *ACI has been afforded the right to respond*

The Order I made against you was made pursuant to section 99 of the Act. The filing of this Order was your notice of my action. The Order with its Statement of Reasons sets out the basis for my action. The Environmental Assessment Report accompanying the Order provided further detail. Section 107 of the Act provides an avenue of appeal from the Order.

You have filed a Notice of Appeal consisting of seven pages of detailed argument supported by a book of Reference Documents. This Notice of Appeal clearly presents your position. I have read your Notice and supporting documents and considered your arguments carefully. The filing of your formal Notice of Appeal was your right of appeal as permitted under the Act.

Your assertion that I have failed to afford ACI the right to respond, object or make representations in respect of the matters raised is erroneous. By filing your Notice of Appeal you have responded, objected to and made representations with respect to the Order.

Based on the foregoing, you know the case you have to meet, and you have been afforded the right to be heard.

(b) *Reasons have been provided*

The Stephenville Order refers to the sites at Stephenville which have been identified in the ESA prepared by CRA as having exceedances greater than the acceptable limits. The CRA Report details where, and for what substances, there are exceedances. It is known that these substances can cause an adverse effect or environmental concern and the CRA Report provides ample evidence to ground the Order made.

(c) *The Order is not improperly purposed, unreasonable, nor made in bad faith*

The Stephenville Order is neither improperly purposed, unreasonable nor made in bad faith.

The purpose of the Order is to rehabilitate the site. The Stephenville site has been identified as having significant contaminants. It is not unreasonable that ACI be ordered to complete the clean up since its operations released or permitted the release of the contamination which is the subject of the Order.

15. STEPHENVILLE DECOMMISSIONING

The Province did receive an Environmental Assessment Registration entitled "Stephenville Paper Mill Site Decommissioning" dated July 28, 2006. The document set out the steps ACI intended to take to decommission the site. These steps included: finalizing a Phase I ESA, conducting a Phase II ESA and developing a Remedial Action Plan (RAP). The decommissioning plan also states: "Following the completion of the Phase II ESA, a comprehensive RAP will be developed and submitted to DOEC." Decommissioning of the site was set to begin in 2006 and tentatively scheduled to be completed by 2008. The decommissioning plan also includes the statement: "ACCC will address and manage the environmental contaminants that are present on the site due to the occupation of Abitibi-Price Inc. or Labrador Linerboard Ltd."

Based on the promises made in the Stephenville Paper Mill Site Decommissioning Plan, the Province released the undertaking from further environmental assessment on October 6, 2006. ACI did submit a Phase I report and demolished a portion of the infrastructure.

However, despite the promises made in the Decommissioning Plan, no Phase II ESA nor Remedial Action Plan have ever been filed with the Province. Accordingly, the Province had no way to know if ACI had fulfilled its obligations. As a result, the Province had to undertake an independent assessment. Given the results of that assessment, pursuant to my obligation to protect the environment, and acting within my legislative authority under the Act, I issued the Order.

16. ALLEGATION THAT THE CRA REPORT RAISES NEW ISSUES

There are no time limits on raising environmental issues and concerns. As Minister, I am expected to and I am going to respond to such issues and concerns as they are made known to my department. Concerns cannot be ignored now simply because they may have avoided detection for a number of years.

17. ACI IS A PERSON RESPONSIBLE

"Person responsible" is defined in section 2(x) of the Act.

(x) "person responsible" means

(i) the owner of a substance or thing,

(ii) the owner or occupier of land on which an adverse effect has occurred or may occur,

(iii) the owner or operator of an undertaking,

(iv) a previous owner of a substance or thing,

(v) a person who handles or has or has had care, management or control, including care, management or control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance or thing,

(vi) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subparagraphs (i) to (v), or

(vii) a person who acts as the principal or agent of a person referred to in subparagraphs (i) to (vi);

The definition of "person responsible" is very broad. You are a previous owner of a substance or thing or a person who has had management or control of a substance or thing and thus would be captured within the definition of "person responsible", whether or not you are an "owner". I have not drawn a distinction between ACI, ACCC or any of ACI's related companies because, in addition to the broad definition of "person responsible", which applies to ACI, section 101 of the Act provides that orders made pursuant to section 99 of the Act are binding on ACI's heirs, successors, executors, administrators, trustees, receivers, receiver managers and assigns.

In addition, ACI has continued to exercise control over the Stephenville Mill site. CRA was only permitted on the site after weeks of negotiations with ACI and then only after an access agreement was reached. CRA had to obtain ACI's permission each time to access the sites at Stephenville. ACI and AMEC personnel also accompanied CRA personnel when they were completing their assessment work. ACI's control over the Stephenville sites is also demonstrated by the fences around the site and presence of security personnel.

18. ALLEGATION THAT THIRD PARTIES ARE RESPONSIBLE FOR CONTAMINATION

ACI cannot shirk its responsibilities simply by stating that the United States Air Force or Labrador Linerboard Limited may have contaminated the Stephenville site as well. The possibility of third party contamination does not relieve ACI of its obligations under the Act. The third parties are also subject to the Act. ACI confirmed its understanding of its obligation and its undertaking to remediate contamination when it stated, in its Stephenville Paper Mill Site Decommissioning Plan submitted to my department: **"ACCC will address and manage the environmental contaminants that are present on the site due to the occupation of Abitibi-Price Inc. or Labrador Linerboard Ltd."**

19. ALLEGED ERRORS IN CRA REPORT

You state that the CRA Report is severely flawed in a number of particular instances. What follows are my comments (presented in italics) on some of the issues you have raised:

(a) the CRA Report fails to distinguish between lands owned or operated by ACI and those owned or occupied by third parties, including Abitibi-Consolidated

Company of Canada, erroneously attributing to ACI the fault and responsibility for all;

The Phase I ESA details potential environmental impairment issues arising from ACI's operations. The Phase II ESA identifies actual areas of environmental impairment.

(b) the CRA Report, in the absence of applicable criteria identified in the Government's regulations, apply environmental standards from the Provinces of Ontario and/or British Columbia which technically and legally do not apply and are not adapted to Newfoundland and Labrador's distinctive hydrogeological and geological characteristics;

In the absence of CCME criteria specific to a non-potable groundwater condition, CRA compared the groundwater analytical results for metals, VOCs, PAHs, PCBs, and general chemistry to Ontario Ministry of the Environment Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, March 9, 2004 - Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition for "All types of property use" (MOE Non-Potable Groundwater Criteria).

The MOE Non-Potable Groundwater Criteria are generic risk-based criteria that evaluate several exposure pathways, including volatilization to indoor and ambient air, direct contact, etc. Evaluation of these pathways is important in order to be protective of human health. These criteria are frequently relied upon by the Newfoundland Department of Environment and Conservation in the absence of CCME criteria for sites with impacts to groundwater that is considered non-potable.

In the absence of applicable criteria identified in the regulations of the Province, the use of criteria from other jurisdictions in a Tier I assessment is consistent with the policies of the Newfoundland and Labrador Department of Environment and Conservation (DOEC) and represents standard practice in the Province.

(c) the CRA Report, when comparing groundwater results to CCME surface water quality guidelines for the protection of freshwater aquatic life or marine aquatic life, as applicable, fails to take into account that these guidelines apply at the point of discharge into the receiving surface water body and not at the location of the groundwater sampling well. In so doing, the CRA Report fails to consider natural attenuation as well as faith and transportation processes occurring in the soil and groundwater before the latter actually reaches and discharges into the receiving surface water, thereby fatally and consistently identifying limit exceedances that are, in all likelihood, not real;

As noted in the CRA Report,

As the sample locations were in close proximity to surface water, most within 150 m, CRA also compared the groundwater analytical results for BTEX/TPH, metals, VOCs, PAHs, PCBs, and general chemistry to:

- *CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table Update 7.1, December 2007 for marine environments (CCME Aquatic Life Criteria).*

  CRA used the CCME Aquatic Life Criteria as a screening tool to evaluate the need for an Ecological Risk Assessment for the Site.

CRA used the CCME Canadian Water Quality Guidelines for the Protection of Aquatic Life Summary Table 7.1, December 2007 as a screening tool to evaluate the need for an Ecological Risk Assessment. CRA did not use the CCME Aquatic Life Criteria to determine areas requiring remediation.

(d) the CRA Report contains testing results from within authorized dump sites, in may [sic] cases established decades ago with Government's knowledge in compliance with existing standards. In the process, the CRA Report fails to distinguish between waste characterization data (which by its nature is expected to exceed non-applicable limits) and surrounding soil, water and groundwater data which, if it exceeded said limits, could lead to the conclusion that the waste management units sampled are potentially having an adverse effect on the environment. Further, the CRA Report fails to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own investigative activities;

Regarding groundwater and surface water data, as the landfills are considered non-containment landfills and are neither lined nor equipped with leachate collection systems, the groundwater and surface water within the footprint of the landfills is in no way confined to the landfill and any impacts identified in groundwater and surface water samples collected within the footprint of the landfills have the potential to migrate outside of the landfills. The DOEC Guidance Document entitled Environmental Standards for Closure of Non-Containment Municipal Solid Waste Landfill Sites (Landfill Guidance Document) states the following with respect to groundwater monitoring at landfill sites, the "...criteria used to evaluate potential impacts shall be based on the appropriate CCME Canadian Water Quality Guidelines with consideration given to the site specific characteristics and on the groundwater use in the area."

Regarding surface water, the Landfill Guidance Document states that the "criteria used to evaluate potential impacts will be based on the appropriate Canadian Water Quality Guidelines and will be applied on a site specific basis depending on surface water use in the area." CRA used the appropriate criteria to evaluate surface water and groundwater impacts.

(e) the CRA Report fails to ascertain and account for a baseline for naturally occurring levels of minerals in soil and groundwater; and

As noted previously, the CRA Reports were prepared, to the extent possible, in accordance with the CSA Standards[1]. *An assessment of naturally-occurring concentrations of minerals is beyond the scope of a typical Phase I or Phase II ESA.*

(f) the CRA Report presents testing results without interpretation or context sufficient to permit any assessment of actual risk or relative importance of real or potential adverse effects.

The CRA Report details evidence of discharges of substances in amounts that, in my opinion, cause or may cause an adverse effect.

20. **LIMITATIONS ACT**

Your final ground of appeal is based on the application of the *Limitations Act*. Specifically, you assert that the Province is statute-barred from proceeding against you because any conduct to be complained of must relate to the time period prior to November 12, 2003.

I reject your argument. In making the Order, I was exercising a power granted to me under the *Environmental Protection Act*. I was not commencing a cause of action in which judicial relief was being sought.

For all of these reasons the Appeal is dismissed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February, 2010.

Charlene Johnson

Charlene Johnson
Minister of the Department of
Environment and Conservation

[1] One notable deviation from the requirements of CSA Standard Z768 is the omission of interviews with personnel familiar with the Site. ACI refused to allow its employees to discuss past operations with CRA. To the extent possible, CRA interviewed former ACI personnel.