CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.,

And

ABITIBI-CONSOLIDATED INC.,

And

BOWATER CANADIAN HOLDINGS INC.,

And

the other Petitioners listed herein

Debtors

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNLAND AND LABRADOR

Petitioner

AMENDED CONTESTATION OF THE MOTION FOR A DECLARATION REGARDING ORDERS ISSUED PURSUANT TO THE *ENVIRONMENTAL PROTECTION ACT*, S.N.L. 2002, CHAP. E-14.02

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN

COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE ABITIBI PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. PREAMBLE

1. On April 17, 2009, this Honourable Court issued an order (as subsequently amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of (i) Abitibi-Consolidated Inc. ("**ACI**") and subsidiaries thereof (collectively, the "**Abitibi Petitioners**"),[1] (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**")[2] and (iii) certain partnerships.[3] Any undefined capitalized expressions used herein shall have the meaning set forth in the Initial Order.

2. Pursuant to the terms of the Initial Order, Ernst & Young Inc. (the "**Monitor**") was named monitor of, *inter alia*, the Abitibi Petitioners and the Bowater Petitioners.

3. On November 12, 2009, Her Majesty the Queen in Right of the Province of Newfoundland and Labrador (the "**Province**") acting through the Minister of Environment and Conservation, issued five (5) Ministerial Orders (the "**EPA Orders**", communicated as Exhibit NL-6) pursuant to s. 99 of the *Environmental Protection Act*, SNL 2002, c. E-14.2 (the "**EPA**"). Later that day, the Province served its *Motion for a Declaration Regarding Orders Issued*

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[1] The Abitibi Petitioners are Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, 3224112 Nova Scotia Limited, Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Incorporated., 4042140 Canada Inc., Donohue Recycling Inc., 1508756 Ontario Inc., 3217925 Nova Scotia Company, La Tuque Forest Products Inc., Abitibi-Consolidated Nova Scotia Incorporated, Saguenay Forest Products Inc., Terra Nova Explorations Ltd., The Jonquière Pulp Company, The International Bridge and Terminal Company, Scramble Mining Ltd. and 9150-3383 Québec Inc. Abitibi-Consolidated (U.K.) Inc. was added to the schedule of Abitibi Petitioners on November 10, 2009.

[2] The Bowater Petitioners are Bowater Canadian Holdings Incorporated., Bowater Canada Finance Corporation, Bowater Canadian Limited, 3231378 Nova Scotia Company, AbitibiBowater Canada Inc., Bowater Canada Treasury Corporation, Bowater Canadian Forest Products Inc., Bowater Shelburne Corporation, Bowater LaHave Corporation, St. Maurice River Drive Company Limited, Bowater Treated Wood Inc., Canexel Hardboard Inc., 9068-9050 Québec Inc., Alliance Forest Products (2001) Inc., Bowater Belledune Sawmill Inc., Bowater Maritimes Inc., Bowater Mitis Inc., Bowater Guérette Inc. and Bowater Couturier Inc.

[3] The partnerships are Bowater Canada Finance Limited Partnership, Bowater Pulp and Paper Canada Holdings Limited Partnership and Abitibi-Consolidated Finance LP.

Pursuant to the Environmental Protection Act, S.N.L. 2002, Chap. E-14.02 (the "**EPA Motion**") which is the object of the present contestation (the "**Contestation**").

II. ORDERS SOUGHT

4. The Abitibi Petitioners hereby seek:

   (a) the dismissal of the EPA Motion, with costs;

   (b) a confirmation that the EPA Orders are stayed by the stay of proceedings issued in the Initial Order at paragraph 10 and, for greater certainty, that the EPA Orders are not subject to the narrow exception provided at paragraph 10.1 of the Initial Order (added to the Initial Order by amendment on May 14, 2009);

   (c) a confirmation that the Province's filing of any claim based, in whole or in part, on the EPA Orders is barred by paragraph 15 of the Claims Procedure Order dated August 26, 2009 (the "**Claims Procedure Order**"), and a further confirmation that no extension of the Claims Bar Date (as said term is defined in the Claims Procedure Order) shall be granted to allow the Province to file such a claim in the claims process;

the whole as set forth in the conclusions of the Contestation.

III. BACKGROUND

5. On December 4, 2008, AbitibiBowater Inc. (hereinafter, collectively with the Abitibi Petitioners or singularly as the context requires, "**Abitibi**") announced the closure of its last remaining mill operation in the Province of Newfoundland and Labrador located at Grand Falls-Windsor effective March, 2009. Following this mill closure, Abitibi would have retained valuable hydroelectric facilities, hydroelectric rights, lands and other assets in Newfoundland and Labrador.

6. Twelve days later, on December 16, 2008, the Province introduced and passed within a single day the *Abitibi-Consolidated Rights and Assets Act*, S.N.L. 2008, c. A-1.01 (the "**Abitibi Act**"), a copy of which has already been communicated to this Court as Exhibit 2 to the *Motion to Contest the Motion for Access to the Electronic Data Room Created by the Petitioners* dated October 26, 2009 (the "**Data Room Contestation**").

7. The Abitibi Act had the effect, *inter alia*, of confiscating with immediate effect and with no compensation whatsoever substantially all of the assets of Abitibi in Newfoundland and Labrador, canceling all water and hydroelectric agreements between the Province and Abitibi, canceling legal

proceedings instituted by Abitibi against the Province and depriving Abitibi of access to the Province's courts for redress in respect of the foregoing.

8. Among the assets confiscated by the Abitibi Act were certain hydroelectric facilities (including facilities not providing power to the Grand Falls mill) which were only partially owned by Abitibi and subject to third party debt obligations. The substantial interests of such third parties were similarly confiscated in the retaliatory and arbitrary sweep of the Abitibi Act.

9. The following represent the most valuable assets among those confiscated by the Province:

   (a) surface rights which the Province had offered to purchase from Abitibi for $19.3 million in November, 2008;

   (b) Abitibi's 51% interest in Star Lake Hydro Partnership, a joint venture with CHI Hydroelectric Company Inc. ("**CHI**") which owns and operates the Star Lake Hydroelectric Project. At the time of expropriation, Abitibi had already agreed to sell its interest to its partner CHI in a transaction that was days away from closing;

   (c) Abitibi's 49% interest in the Exploits River Hydro Partnership, a partnership with Central Newfoundland Energy Inc. which operates the Bishop's Falls hydroelectric facility and a part of the Grand Falls hydroelectric facility;

   (d) Abitibi's remaining wholly-owned interest in the Grand Falls hydroelectric facilities; and

   (e) Abitibi's wholly-owned interest in the Buchans hydroelectric facility.

10. Although the Province publicly announced that the Abitibi Act did *not* include the Grand Falls mill which was then still in operation, a later review of the Abitibi Act revealed that, whether deliberately or as a result of the haste in which the Abitibi Act was drafted, the Grand Falls mill site was in fact included in the schedules of confiscated assets.

11. As discussed further below, Abitibi shall be claiming from the Province a full indemnity for the costs of operating and winding down in an orderly fashion the Grand Falls mill operation which the Province confiscated effective December 16, 2009. Abitibi takes the position that the severance and employee costs which the Province has attempted to collect from Abitibi are properly payable by the Province as successor employer.

12. With the exception of the orderly closure of the Grand Falls mill, Abitibi has had no material active operations in the Province since December 16, 2008.

13. Whether due to its haste or by design, the Province did not expropriate certain assets owned by Abitibi in Newfoundland and Labrador when the Abitibi Act was passed into law (collectively, the "**Remaining Assets**"). The Remaining Assets consist primarily of the former Botwood shipping terminal site closed in February 2009, as well as the site of the Stephenville newsprint mill idled in October 2005 and closed in December 2005.

14. Abitibi has already expended substantial sums in site-maintenance as well as in environmental review and remediation activities in respect of the Remaining Assets, including remediation of matters for which the Province, as prior owner, bears substantial responsibility.

15. In April, 2009, Abitibi filed a *Notice of Intent to Submit a Claim to Arbitration* under Chapter 11 of the *North American Free Trade Agreement* ("**NAFTA**") in respect of its losses of in excess of $300 million arising from the wrongful confiscation effected by the Province. A copy of said Notice has already been communicated to this Court as Exhibit 3 to the Data Room Contestation.

16. Abitibi remains in negotiations with the Canadian Government regarding its claim under NAFTA. Should the negotiations fail to result in an acceptable amount of compensation, Abitibi will file a *Notice of Arbitration* under Chapter 11 of NAFTA and will pursue its claim for redress to the fullest extent of the law.

17. It is also to be noted that Abitibi's claim for compensation under NAFTA includes almost no material amounts in respect of any of the assets which are the subject of the EPA Orders. The only incidences of overlap are the claim in respect of confiscated surface rights (which the Province had previously offered $19.8 million to purchase) and the Grand Falls mill site.

18. On October 16, 2009, the Province filed its *Motion for a Declaration that the Petitioner is Entitled to Access the Electronic Data Rooms Created by the Debtors* (the "**Data Room Motion**"), to which Abitibi replied with the Data Room Contestation. The Data Room Motion was dismissed with costs by this Court in reasons released on November 9, 2009. While claiming to be a "creditor" of Abitibi by reason of the claims advanced in some of the Orders contained in the Data Room Motion, the Province takes the precise opposite position in its present motion.

IV. SUMMARY OF GROUNDS FOR THE CONTESTATION

19. Abitibi takes the position that the EPA Orders are in pith and substance financial or monetary in nature and were issued in violation of the Initial Order, as amended. As such, the EPA Orders are not exempted from the stay of proceedings issued by this Court and there is no basis, in fact or in law, to grant the conclusions of the EPA Motion which would have the effect of granting the Province a preference over other creditors.

20. The EPA Orders primarily concern assets which are no longer in the power, possession or control of Abitibi. Indeed, three (3) of the five (5) EPA Orders relate to assets which have been expropriated without compensation pursuant to the Abitibi Act and in respect of which the Province bears the primary environmental responsibility as the "person responsible" under its own legislation.

21. In seeking to issue the EPA Orders against Abitibi as a former owner or occupier only, the EPA Orders are no more than a thinly disguised demand for money, in effect asking Abitibi to improve the value of the confiscated property for the benefit of its illegitimate new owner.

22. By suddenly issuing the EPA Orders, the Province displayed a total lack of impartiality and was in a situation of conflict of interest as the EPA Orders are clearly designed to enhance the property value of lands confiscated from Abitibi which are now owned by the Province.

23. With respect to the Remaining Assets, Abitibi had ceased conducting any active business on such lands prior to the commencement of these CCAA proceedings. As such, the two (2) EPA Orders in respect of the Remaining Assets are fundamentally monetary in nature as they seek to compel Abitibi to expend material sums of money for assets not used in its business with no net value.

24. The Remaining Assets are in the process of being disposed of, failing which they shall be transferred from Abitibi and placed in the hands of a receiver prior to the emergence of Abitibi from these CCAA proceedings. As such, Abitibi either is, or will shortly be, only a former owner or occupier in respect of all of the assets which are the subject-matter of the EPA Orders.

25. Accordingly, whether in respect of assets where Abitibi is merely a former owner or occupier or in respect of the Remaining Assets, the EPA Orders are by their nature financial or monetary orders (and intended to be so) with the intended effect of requiring millions of dollars of expenditures of creditor money for the improvement of lands confiscated by the Province or which will shortly be placed in the hands of a Receiver.

26. By failing to file a claim in due time, the Province deliberately chose to ignore the Claims Bar Date established by the Claims Procedure Order and as a result, all claims by the Province are now barred pursuant to paragraph 15 of the Claims Procedure Order.

27. Abitibi further submits that in light of the bad faith displayed by the Province in issuing the tactical and abusive EPA Orders as well as the unlawful and confiscatory actions of the Province in relation to the Abitibi Act, this Court should not exercise its discretion in granting any extension of the Claims Bar Date in favour of the Province.

28. Indeed, the EPA Orders violate the duty of fairness and should be overturned on the ground of procedural impropriety as the Minister, pursuant to s. 99 of the EPA, did not have, nor was she presented with, reasonable grounds to believe that:

    (a) Abitibi is a "person responsible" within the meaning of the EPA; or

    (b) the evidence presented in the reports prepared by Conestoga-Rovers & Associates ("**CRA**" and the "**CRA Reports**") demonstrates that Abitibi contravened or will contravene the EPA.

29. Although Abitibi [...] has appealed the EPA Orders, [...] it may not be in position to seek judicial review of the Minister's decision should the appeals be dismissed. The Province is well aware of these limitations and the timing of the EPA Orders virtually precludes Abitibi from seeking recourse, thus violating the Province's duty of fairness.

V. EPA COMPLIANCE

30. Abitibi and its predecessors have carried on business in Newfoundland and Labrador for a period in excess of 100 years under a variety of statutory and constitutional regimes.

31. During that time, Abitibi founded and built communities, roads, schools and hospitals. By way of example, the town of Grand Falls-Windsor was founded by and originally owned by a predecessor of Abitibi. Abitibi has always placed a high value upon its environmental compliance efforts in areas where it has carried on business and has made concerted efforts to anticipate environmental issues rather than merely reacting to orders.

32. In the fifteen (15) years prior to the passage of the Abitibi Act, Abitibi has spent approximately $138.5 million in environmental compliance or remediation efforts in the Province of Newfoundland and Labrador. These investments in assessments, environmental compliance or remediation activities of Abitibi have been, with rare exceptions, made on Abitibi's own initiative without the requirement or necessity of ministerial action. Abitibi has been proactive in its efforts to ensure that its operations are fully in compliance with prevailing environmental requirements in Newfoundland and Labrador.

33. Abitibi's investments in environmental compliance, assessment and remediation over the past decade include the following:

    (a) environmental assessments and clean-ups (woodland camps, Stephenville, Botwood and Grand Falls);

(b) other decommissioning and clean-up activities (Stephenville);

(c) mill effluent treatment plant improvements related to discharge requirements (Stephenville and Grand Falls);

(d) mill air emissions control improvements related to discharge requirements (Stephenville and Grand Falls); and

(e) other activities related to environmental sustainability including land donations (Botwood and woodlands), the Exploits River Salmon Diversion Program, reforestation, sylviculture and forest improvements.

34. The Province's bad faith in issuing the EPA Orders is apparent when considered against the standards to which the Province holds itself when it comes to the remediation of environmental situations which are its own responsibility, the whole as more fully detailed below.

VI. MISUSE OF THE EPA

35. The EPA Orders evidently stem from a desire to "throw the book" at Abitibi with a view to seeing what, if anything, may stick for purposes of Abitibi's compensation claims and heedless of the baseless damage inflicted to the good name and reputation of Abitibi.

36. In the months following the adoption of the Abitibi Act, the Province has used the full range of its powers, including the misuse of discretionary authority granted under the EPA, to wage a campaign of retribution and harassment against Abitibi with the apparent goal of dissuading Abitibi from pursuing its claims for compensation. Many of the matters dredged up in this process include matters which are, or were, to the knowledge of the Province, the responsibility of third parties and often relate to situations which have been known for decades.

37. The Province determined to use the broad discretion vested in the Minister under the EPA to accomplish its goals and its attorneys commissioned the CRA Reports in order to provide a pretext for issuing the EPA Orders.

38. In the process, decades-old matters have been resurrected in the months following the Abitibi Act, all of which have suddenly become new and pressing concerns. Abitibi shall ask this Court to conclude that the EPA Orders have been made in bad faith, with a total lack of impartiality and with a view to harass or punish Abitibi rather than following a good faith, ordinary course environmental assessment process.

39. Abitibi has a right, as a principle of procedural fairness and natural justice, to challenge the EPA Orders. However, given that Abitibi is under CCAA protection, Abitibi is precluded from [...] seeking judicial review should the

appeals be denied. The time and costs associated with challenging the Orders would significantly drain Abitibi's limited resources and the potential recovery for all of its stakeholders.

40. The Province is well aware of the above-mentioned circumstances and its strategy is to deny Abitibi its right of recourse, while simultaneously attempting to circumvent the parameters of the Initial Order and the Claims Procedure Order. The proper forum for the Province's claims to have been dealt with was the claims process which the Province has chosen to ignore, seeking instead to act as judge, jury and executioner in a pre-judged process undertaken for collateral purposes.

41. The EPA Orders issued without prior leave of the Court are based on the CRA Reports and relate to five sites where there are alleged violations of the EPA, namely Grand Falls-Windsor, Stephenville, Botwood, Buchans and Logging camps (the latter consists in fact of several locations).

42. It is important to note, however, that none of the cited cases relates in any way to any active operations of Abitibi from or after the date of the commencement of these CCAA proceedings. The sole object of the Orders is thus to establish a basis for monetary claims in respect of past matters.

43. The failures and weaknesses evident in the CRA Reports are outlined in detail below. Abitibi submits that these findings are of a nature as to lead to the reasonable conclusion that the CRA Reports were commissioned for the purpose of providing support for political decisions already taken rather than for the purpose of forming a good faith view of any matter.

44. The Province, in issuing the EPA Orders, has utterly failed to follow any semblance of good faith or due process following in the same spirit the confiscation of Abitibi's property pursuant to the Abitibi Act, thereby strongly suggesting that the EPA Orders violate Abitibi's rights.

45. The EPA Orders relate exclusively to historical conditions relating to the subject properties, in some cases relating to actions taken by third parties (including the American Smelting and Refining Company Incorporated ("**ASARCO**") or the United States Air Force ("**USAF**"), as detailed below) decades in the past.

46. In addition, with the partial exceptions of the Remaining Assets, the relevant sites are on lands that have been confiscated by the Province pursuant to the Abitibi Act or that were surrendered to the Province years ago. In the case of lands which are not in its possession, Abitibi has no power to comply with the EPA Orders even if it were so inclined since it cannot, in any event, access lands in the possession of third parties (including the Province) to complete the remediation ordered in the EPA Orders.

47. In addition, as outlined below in respect of the Buchans site below, Abitibi does not have control over, nor is it informed by, third parties who perform activities in the areas targeted by the EPA Orders and which are of the kind likely to have an impact on the environment.

48. The EPA Orders order Abitibi to perform, *inter alia,* the following:

(a) the submission for approval by the Province, by January 15, 2010, of a detailed Remediation Action Plan for all sites which have been identified by CRA has having exceedances greater than the (allegedly) applicable limits;

(b) the completion of the approved site remediation actions by January 15, 2011 or by another date as may be agreed-upon with the Province's Department of Environment and Conservation;

(c) the closure of all landfills and lagoons/impoundments associated with each site by January 15, 2011.

49. The EPA Orders are inappropriate in their sequencing and unrealistic in their scheduling in light, *inter alia,* of the following:

(a) in order to submit a detailed Remediation Action Plan, several tasks would need to be carried out by Abitibi including a detailed review and validation of the CRA Reports and a Phase III environmental site assessment at each site so as to confirm and delineate alleged impacts, select the appropriate remedial actions and scope out the work. These tasks, in and of themselves, would require at least a full year to be carried out adequately;

(b) the closure of all landfills and lagoons or impoundments which are authorized as waste management units is logically the last task to perform when a remedial action plan is implemented since these units are required to dispose of the waste generated as part of the remedial actions. By requiring Abitibi to close these units no later than January 15, 2011, the Province essentially prevents Abitibi from implementing the ordered remedial actions; and

(c) given the magnitude and scope of the work ordered by the Province to be carried out simultaneously at the five (5) locations targeted in the EPA Orders, Abitibi, based on its past experiences with such projects in Newfoundland and Labrador, doubts that there exist sufficient resources (engineering firms, specialty providers such as drillers and laboratories and authorized specialty contractors) to carry out the work within the prescribed one-year time frame.

50. Given the lack of capacity of Abitibi to undertake almost all of the matters which are the subject matter of the EPA Orders, the only practical effect of these orders is to establish a basis for the Province to recover amounts it intends to spend itself for the remediation of the properties in question. As such, the EPA Orders are in their true pith and substance financial and monetary in nature.

51. The Province, as the transferee of most of the lands in respect of which the EPA Orders were issued, has pointedly declined to make an order against itself despite the fact that the Province would be the beneficiary (in terms of improved land value) of any remediation work performed and the fact that the Province, as owner and occupier of the lands is clearly a "person responsible" under s. 99 of the EPA. By having failed to make an order against itself, the Province further demonstrates the bad faith which taints the issuance of the EPA Orders.

52. [..]. <u>On January 11, 2010, Abitibi appealed the EPA Orders as appears from the cover letter and the Notices of Appeal communicated herewith, *en liasse*, as **Exhibit D-6**</u>. While appealing directly to the Minister may not be extremely onerous, given the Province's past dealings with Abitibi, such efforts are likely to be in vain. Any judicial review by Abitibi would place a significant and unrealistic burden on Abitibi, requiring it to expend money and resources that it cannot afford to spend and reducing any potential benefits to its stakeholders.

VII. REVIEW OF THE CRA REPORTS

53. The CRA Reports (Exhibit NL-5) upon which the EPA Orders were obtained are reviewed in detail below in respect of each site. Overall, Abitibi submits that the CRA Reports are severely flawed in a number of respects, including the following:

    (a) the CRA Reports each state that they were prepared for the Provinces' NAFTA/CCAA counsel, WeirFoulds LLP, and are thus on their face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

    (b) the CRA Reports consistently fail to distinguish between lands owned or operated by Abitibi and those owned or occupied by third parties, erroneously attributing to Abitibi the fault for all;

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

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

(e) the CRA Reports contain voluminous testing results from within authorized dump sites, in many cases established decades ago with the Province's knowledge in compliance with existing standards. In the process, the CRA Reports fail to distinguish between waste characterization data (which 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 unit sampled is potentially having an adverse effect on the environment. Further, the CRA Reports fail to establish any basis to demonstrate migrations from authorized dump sites other than by reason of CRA's own activities;

(f) the CRA Reports fail to ascertain and account for a baseline for naturally occurring levels of minerals, particularly in areas with proximity to a known mine site where such mineralization is to be expected;

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

(h) the CRA Reports rely, in certain instances, on false or erroneous information in respect of the sites which are targeted by said reports;

(i) the information on which the CRA Reports are 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

(j) 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.

54. In light of the above, the grounds upon which the Minister issued the EPA Orders were not reasonable and thus contrary to s. 99 of the EPA. Failing to make the EPA Orders based on reasonable grounds violates procedural fairness and demonstrates bias on the part of the Province.

1. Grand Falls - Windsor

55. The Grand Falls paper mill, built in 1909, was the first pulp and paper mill built in Newfoundland and Labrador. In 1969, Abitibi purchased the Grand Falls mill and in the process, acquired land tenure that included freehold and leasehold lands. On December 16, 2008, when it passed the Abitibi Act, the Province effectively expropriated the land upon which the Grand Falls paper mill is built.

56. The CRA Report concerning the Grand Falls-Windsor site (the "**Grand Falls Report**") focuses primarily on anticipated issues which would arise as and when the mill site is actually decommissioned.

57. Since the Province is now the owner of the Grand-Falls paper mill, the expenses of safely demolishing the mill and removing it belong to its new owner, the Province. The anticipated environmental impacts of that process cannot, under the EPA or otherwise, be attributed to a former owner.

58. Although the Province is well aware that it is the owner of the Grand Falls mill site, it has issued the EPA Order in respect thereof to Abitibi instead of itself, further evidencing the lack of good faith surrounding the process leading to the issuance of the EPA Orders by the Minister.

59. The Grand Falls Report contains, *inter alia*, the following deficiencies in addition to those highlighted above:

    (a) CRA field work methods and sampling practices were not always performed with the standards and engineering practices expected from a reputable expert in this field and in fact, may have themselves been the cause of environmental contamination. In particular, on October 7, 2009, CRA excavated and disturbed five (5) to ten (10) yellow bags filled with asbestos without observing basic regulations pertaining to asbestos handling and without notifying appropriate authorities, the whole as documented in a letter from Abitibi's counsel to the Province dated October 21, 2009, communicated herewith as **Exhibit D-1**;

    (b) CRA did not present, interpret or discuss its results in any detail so that it is not possible to validate their results and conclude as to their relative risk to human health and/or the environment. The alleged areas of contamination are also not delineated, making it impossible to estimate the cost of a potential remedial action;

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

(d) CRA has identified the future demolition of buildings and structures as an area of concern (AOC 9) and included this in the scope of its environmental assessment. There are currently no such activities at the Grand Falls mill and thus, no contamination occurring from such activity;

(e) 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; and

(f) 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.

2. **<u>Stephenville</u>**

60. Abitibi's operations at the Stephenville newsprint mill (one of the Remaining Assets) were formally shut on December 14, 2005. Since the mill closure, Abitibi has expended approximately $2 million in environmental assessments and site clean-up (chemical and waste disposal) efforts, in addition to a demolition and de-commissioning project believed to be one of the largest and most extensive such project in Newfoundland and Labrador to date.

61. Abitibi's efforts have been attending not only to consequences of its own operations at the Stephenville mill site, but also to the condition of the site bequeathed to it by its former owner, the Province.

62. Indeed, substantial portions of the site of the actual Stephenville newsprint mill served, between 1941 and 1966, as the Harmonville base of the USAF under lease from the Province (or its predecessor). During that era, several fuel storage facilities and dump sites for by-products of an air force base were established.

63. In the late 60's, following the closure of the Harmonville USAF Base, the Province passed legislation which allowed for the construction of a kraft linerboard mill in Stephenville. The costs of the project ballooned and in May 1972, the Province passed legislation allowing a crown corporation,

Labrador Linerboard Limited ("**Labrador Linerboard**"), to take control of the mill. Production began in 1973 but from the beginning, the mill struggled for financial viability. On August 26, 1977, the Stephenville linerboard mill was closed.

64. In 1979, Abitibi purchased the assets of Labrador Linerboard, paying $43.5 million for the linerboard mill and its docking and shipping facilities, along with an agreement for the allocation of timber supply. In return, Abitibi promised to convert the mill to a newsprint mill with the capacity to produce 150,000 tons per year. The Stephenville newsprint mill was opened in September 1981 and operated by Abitibi until December 2005.

65. On December 18, 2008, simultaneously with the Abitibi Act, the Province revoked the agreement for the timber supply rights in relation to the Stephenville mill by passing the *Labrador Linerboard Limited Agreement 1979 Repeal Act*, SNL 2008 c42, copy of which is communicated herewith as **Exhibit D-2**.

66. Abitibi estimates that a substantial portion of the significant costs associated with the remediation of the Stephenville site are directly attributable to the 25 years of intensive use of the site by the USAF and Labrador Linerboard, the whole under the stewardship and responsibility of the Province.

67. Despite being the lessor of the Stephenville site to the USAF and the owner of the crown corporation for the former Labrador Linerboard operation, the Province has made no effort to establish its own level of responsibility under the EPA, nor has it taken any steps to pursue itself under the Act.

68. In addition to the deficiencies highlighted above, in preparing the Stephenville Report, CRA compared ground water sampling results to Ontario and British Columbia ground water criteria which do not apply in Newfoundland and Labrador, thus, any exceedances of these criteria cannot be interpreted as a limit exceedances under applicable regulations.

3. Botwood

69. The CRA Report concerning the Botwood site (one of the Remaining Assets) (the "**Botwood Report**") refers to an area around the Town of Botwood where Abitibi formerly had a storage and shipping operation relating to its Grand Falls mill.

70. The Botwood Report does not limit itself to Abitibi's operations at Botwood however, as it also reviews the following:

    (a) storage and shipping operations utilized by ASARCO for its mining operations at Buchans, which CRA erroneously conflated with Abitibi for the purposes of its Botwood Report;

(b) the bed of a railway (the Botwood - later Grand Falls - Central Railway) owned and operated by a company which has now been dissolved following the transfer to third parties of its property interests; and

(c) storage and other facilities transferred to the Town of Botwood in the 1980's and used for storage of construction materials, vehicle servicing and other activities, including an area for a Canada Post community mail box.

71. The Botwood Report contains, *inter alia*, the following deficiencies in addition to those highlighted above:

(a) CRA field work methods and sampling practices were not always performed with the standards and engineering practices expected from a reputable expert in this field;

(b) CRA did not present, interpreted and discuss its results in any detail so that it is not possible to validate said results and conclude as to their relative risk to human health and/or the environment. The alleged areas of contamination are also not delineated, making it impossible to estimate the cost of a potential remedial action; and

(c) before concluding as to a limit exceedances, CRA made no attempt to assess natural background levels of potential contaminants such as arsenic or other metals which often barely exceed the allegedly applicable guideline. As in respect of the Grand Falls Report, it is interesting to note that arsenic was detected slightly above the applicable guidelines in several locations, an observation supporting the potential for naturally occurring arsenic in central Newfoundland and Labrador.

4. <u>Buchans</u>

72. The first salvo in the Province's attempt to turn the EPA to its purposes in defence of its unlawful confiscation of assets pursuant to the Abitibi Act was fired on May 29, 2009 in relation to the Buchans site.

73. The Buchans site was part of the original lands granted in 1905 under a so-called "Charter Lease" to the Anglo-Newfoundland Development Company, a company which merged with Abitibi's predecessor in 1961. Mining operations were developed on certain lands at Buchans in the 1920s as part of a joint venture with a predecessor of ASARCO, a corporation unrelated to Abitibi or its predecessors, under an agreement pursuant to which ASARCO was the operator of the mine.

74. The land beneath the Town of Buchans was surrendered to the Province (and accepted) by grants in 1978 and 1979. In 1994, most of the remaining interests of Abitibi in the area surrounding Buchans were surrendered to the Province following the ending of mining operations by ASARCO in the early 1980's. In 2005, ASARCO filed for Court protection under Chapter 11 of the U.S. Bankruptcy Code. At the time of the passage of the Abitibi Act in 2008, Abitibi retained some residual surface and timber rights in the area as well as a small 2 MW hydroelectric power station near the town.

75. The tailings disposal ponds associated with ASARCO's mining operations (the "**Tailings Ponds #1 and #2**") have been the subject of fairly close environmental monitoring since mining operations were closed. An action plan for the monitoring of surface water and effluents throughout the former mine site, including Tailings Ponds #1 and #2, was agreed upon with the Province beginning in 1991 (reviewed on an annual basis thereafter), which agreement was amended in 2007 following ASARCO's filing under Chapter 11.

76. Between 1999 and 2008, the Province transferred mining rights in relation to Tailings Ponds #1 and #2 to Atlantic Barite Limited, a subsidiary of Pennecon Limited ("**Pennecon**"). Since the transfer of mining rights to Pennecon, Tailings Pond #1 has been the object of significant subsequent barite mining activity (barite being one of the key ingredients in drilling mud for offshore oil and gas wells) which has potentially affected the quality of the surface water and effluents monitored by Abitibi. Said activities include, *inter alia*, the following:

    (a) excavation and dredging of Tailings Pond #1;

    (b) barite refining in the former mine process building and construction and operation of another tailings pond (the "**Pennecon Pond**"); and

    (c) recent rapid and drastic lowering of the water level in Tailings Pond #1 and the installation, by the Province, of a rudimentary overflow culvert through the earthen dam itself which compromises the structural integrity and safety of the dam.

77. Having regard to third party disturbances in Tailings Pond #1 as well as the expropriation of Abitibi's remaining interests in the area and the CCAA proceedings, Abitibi sent a letter to the Province terminating the "Action Plan" and declaring same to have been frustrated for the reasons set out in the letter. A copy of the letter from Abitibi's solicitors to the Province's Minister of Environment and Conservation dated November 26, 2009, is communicated herewith as **Exhibit D-3**.

78. The Province has also issued mining rights in respect of zinc and other metals to Buchans River Limited over much of the former Buchans mine

area, including the Lucky Strike Glory Hole, the Oriental Pits and the Tailings Spill Area (the "**TSA**"). The TSA is a topographic low area near the former ASARCO ore-processing building where, from 1928 to the late 1960s, during process upsets and other emergencies, tailings, waste material and/or concentrate was discharged.

79. Buchans River Limited's plans to redevelop the mine with an open pit process effectively prevents the implementation of a Remedial Action Plan in the TSA as well as the long-term effectiveness of any such action.

80. In November 2007, Abitibi applied for a Certificate of Authorization to dispose of the TSA waste in the Lucky Strike Glory Hole however, no response from the Province has been received to date.

81. Despite these intervening factors and despite the existence of the CCAA stay of proceedings in these proceedings, the Province purported to issue an Order dated May 29, 2009 (the "**May 29 Order**") requiring Abitibi to complete remedial actions in relation to the TSA by September 30, 2009. A copy of the May 29 Order is communicated herewith as **Exhibit D-4**.

82. On June 24, 2009, Abitibi filed with the Province an appeal of the May 29, 2009 Order pursuant to the EPA, citing, among other grounds, the existence of the stay of proceedings issued by this Court. On July 24, 2009, the Province issued an order staying its own May 29 Order in light of the appeal, but purporting to reserve to itself the right to issue further orders. A copy of such decision dated July 24, 2009 is communicated herewith as **Exhibit D-5**.

83. Following the stay of the May 29 Order, CRA commenced its review of the Buchans site along with the other reviews which led, *inter alia*, to the report in respect of the Buchans site (the "**Buchans Report**").

84. The Buchans Report contains, *inter alia*, the following deficiencies in addition to those already highlighted above:

    (a) the Buchans Report ignores three (3) sources of third party contaminant discharges to the environment : (i) the Pennecon Pond, (ii) the Pennecon operations at the former production building and, (iii) the untreated Town sewer discharge to the Buchans River;

    (b) CRA field work methods and sampling practices were not always performed with the standards and engineering practices expected from a reputable expert in this field;

    (c) CRA did not present, interpret and discuss its results in any detail so that it is not possible to validate said results and conclude as to their relative risk to human health and/or the environment. The alleged areas of contamination are also not delineated, making it impossible to estimate the cost of a potential remedial action; and

(d) before concluding as to a limit exceedances, CRA made no attempt to assess natural background levels of potential contaminants such as metals that are naturally occurring in elevated concentrations in ore-rich areas such as a mine.

5. Logging Camps

85. The CRA Report concerning logging camps (the "**Logging Camps Report**") allegedly recounts an inspection of some forty-eight (48) logging camps. As Abitibi only has active records of twenty (20) such camps closed since 1965, it can only be presumed that the other twenty eight (28) logging camps investigated by CRA are either not Abitibi logging camps at all, or date back to decades when horse power was the predominant source of power in the camps and few if any refuelling sites (the most likely source of potential adverse effects in such logging camps) were likely to have existed.

86. Among other issues with the Logging Camps Report is its failure to segregate third party activities from those which may have resulted from Abitibi's prior activities. Many such sites have, after dismantling and clean-up by Abitibi, been used 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 six (6) such locations with no method of distinguishing whether results obtained were attributable to these subsequent activities or to the original logging camps.

87. In light of the foregoing, in issuing the EPA Order based on the Logging Camps Report, the Minister had no reasonable basis to determine the degree if any to which Abitibi was a "person responsible".

88. The lack of objectivity and "directed verdict" nature of the EPA Orders and the Logging Camps Report is best highlighted by reference to the Lake Ambrose logging camp at s. 2.2.3 of the Logging Camps Report. After noting earlier in said report that chainsaws and motorized vehicles were not used in the logging operations of Abitibi until the late 1950's (prior operations were performed using horse and man power) and after noting the *closure* of this camp in the mid-1950's, the Logging Camps Report goes on to attribute without evidence various readings of fuel contamination to Abitibi's operations.

89. The fact that the Lake Ambrose site is currently used recreationally and that there are nearby cottages (who may use the site for dumping waste and other activities) is not considered in the Logging Camps Report. Section 2.2.3.5 notes, without comment, "*Portions of the Lake Ambrose Site have been developed for residential purposes and are currently occupied by dwellings*". As between Abitibi, who has not operated on the site for fifty years and used

only horse power and man power and current recreational dwellers with power boats, snowmobiles, ATV's, automobiles and generators, the Province doubtless objectively chose the most likely source for the observed contaminations of waste oil, fuel and similar items as being Abitibi.

90. The Logging Camps Report contains, *inter alia*, the following deficiencies in addition to those already highlighted above:

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

    (b) CRA has erroneously identified several dump sites within the limits of the camp sites, which suggest adverse environmental conditions near areas currently occupied by cottage dwellers. The presence of surficial litter and refuse is not indicative of the presence of a landfill which for health, safety and hygiene reasons, were established further away from living quarters, and could have been caused, at least in part, by third party dumping.

VIII. SECTION 10.1 OF THE AMENDED INITIAL ORDER

91. Although it vigorously contests the validity of the EPA Orders and the alleged violations contained in the CRA Reports, Abitibi estimates, on a preliminary basis, that the costs of complying with the EPA Orders to be in the range of several hundreds of millions of dollars (including the preparation of detailed Remediation Action Plans, the completion of site remediation actions and the closing of all landfills and lagoons or impoundments). The environmental Phase III studies alone would likely entail approximately one year of work and many millions in expenses.

92. While the Province has sought carefully to frame the EPA Orders so as to fall within the limited environmental exemption from the stay of proceedings contained in paragraph 10.1 of the Initial Order, as amended, a cursory examination of the EPA Orders, the consequences thereof and the statutory framework within which they were issued makes it quite clear that the EPA Orders are and were intended to be in their pith and substance financial or monetary orders which are thus stayed.

93. By their nature, the EPA Orders seek to require Abitibi to incur costs for the primary purpose of improving the value of lands the bulk of which have been confiscated (and much of the remainder of which was surrendered to the public years ago). In making the EPA Orders, the Province fully intended to create and advance a very material monetary claim against Abitibi and in so doing has consciously and deliberately acted outside of the limited protection of paragraph 10.1 of the Initial Order.

94. Abitibi also notes that only days prior to issuing the allegedly non-monetary EPA Orders, the Province was before this Court in the Data Room Motion arguing that it was a creditor of Abitibi precisely because of, *inter alia,* various environmental claims it allegedly possessed, including claims relating to Buchans, a site targeted by one of the EPA Orders which is clearly directed at regulatory actions in respect of *active* operations.

95. In paragraphs 19 and 20 of its judgment on the Data Room Motion, this Court noted that "*the Province claims that because of Abitibi's economic activities, the latter has exposed itself to numerous environmental obligations, the precise extent of which remains to be determined*" and "*The Province alleges that it has incurred significant costs in that regard*".

96. Contradictorily, in the EPA Motion, the Province alleges that the very same monetary claims that it sought to advance as a basis to seek access to the Data Room are not monetary claims and are thus unaffected by the stay of proceedings and the Claims Procedure Order.

97. While the claims of the Province to be a creditor were and are denied for the reasons set forth in Abitibi's Data Room Contestation and as set forth herein, the fact that such claims are financial and monetary claims by their nature is plain and obvious.

98. The EPA Orders are issued under s. 99 of the EPA which provides that the Minister may make an order "*requiring a person <u>at that person's own expense</u>*" to do any of the listed category of actions. The jurisdiction to make an order is specifically couched in terms of the ability to cause a person to incur an expense - such an order is by its very nature financial or monetary.

99. Furthermore, s. 102(2) of the EPA permits the minister to take action to carry out the terms of the order if the person to whom it is directed fails to do so and provides that the expenses incurred by the minister in doing so "*are recoverable by the minister from the person to whom the order was directed as a debt owed to the Crown*".

100. The entire pith and substance of the EPA Orders is a transparent attempt to lay the groundwork for substantial monetary claims against Abitibi either to be used as an attempted offset in connection with Abitibi's NAFTA claims for compensation for expropriation or to dissuade Abitibi from pursuing such remedies as it has for the unlawful confiscation of its assets by the Province.

101. In seeking to create an offset claim, the Province would effectively be attempting to raise its unsecured, unliquidated and highly contested claim for environmental remediation on properties with limited or no value into a *de facto* super priority lien on the expropriation compensation due on entirely different properties.

102. The Province cannot use its environmental legislation to fashion a preference for itself contrary to the scheme of distribution mandated by Federal bankruptcy legislation.

103. The fact that the EPA Orders are truly monetary in nature is further highlighted by the fact that they relate for the greater part to properties which the Province has confiscated under the Abitibi Act or which Abitibi has otherwise surrendered possession or control of many years in the past.

104. Whereas an existing owner of lands being asked to remediate an environmental condition in respect of ongoing operations might be said to derive a corresponding benefit from an expense incurred arising from the improvement to the lands thereby occasioned, a former owner or a victim of confiscation has no such benefit and compliance with such an order is an expense devoid of any direct or indirect benefit. Indeed, as the current owner of most of the lands in respect of which the remediation expenses have been ordered, the Province is the intended beneficiary of the expenditures that it has used its discretion to order.

105. In the circumstances, Abitibi alleges that the EPA Orders are financial or monetary orders which, while in relation to the environment, are not in any way exempted from the stay of proceedings pursuant to or s. 10 s. 10.1 of the Initial Order, as amended.

IX. CLAIMS PROCEDURE ORDER

106. The Claims Procedure Order dated August 26, 2009 does not in any way conflict with paragraph 10.1 of the Initial Order. The Claims Procedure Order requires all claims to be filed by the Claims Bar Date, while paragraph 10.1 of the Initial Order provides for a narrow exception to the stay with respect to certain claims by the Crown, provided however, that "*any financial or monetary fines or orders shall be stayed*". That such stayed monetary or financial claims should be subject to compromise in the claims process is normal and clear.

107. The Claims Procedure Order does not infringe on public policy or provincial jurisdiction since, should the debtor remain owner or occupier of the subject lands post emergence from CCAA, fresh grounds for a new order would exist that would not have been compromised. The claims against a former owner, on the other hand, are purely monetary in nature and of the sort intended to be subject to compromise.

108. It would be contrary to public policy to permit the Province to ask the creditors of Abitibi to bear the cost of improving assets which it has confiscated without compensation, contrary to international and constitutional conventions.

109. Abitibi reserves the right to make its legal arguments in relation to the proper interpretation of the First Stay Extension Order, the Claims Procedure Order as well as the EPA and the constitutional issues raised by the Province in its Outline of Argument to be delivered in conjunction with a case management schedule to be determined by this Court.

X. CONCLUSIONS

110. The Abitibi Petitioners respectfully submit that the EPA Motion should be dismissed with costs.

111. The present Contestation is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

[1] **DISMISS** the *Motion for a Declaration Regarding Orders Issued Pursuant to the Environmental Protection Act, S.N.L. 2002, Chap. E-14.02* by the Province of Newfoundland and Labrador (the "**Province**").

[2] **DECLARE** that the orders issued against Abitibi-Consolidated Inc. by the Minister of Environment and Conservation in the Province on November 12, 2009 pursuant to s. 99 of the *Environmental Protection Act*, S.N.L. 2002, chap. E-14.02 (the "**EPA Orders**") are stayed under paragraphs 10 of the Initial Order issued by this Court on April 17, 2009 and are not subject to the exception to the stay of proceedings found at paragraph 10.1 of the Initial Order;

[3] **DECLARE** that the Province of Newfoundland and Labrador's filing of any claim in the claims process based, in whole or in part, on the EPA Orders is barred by paragraph 15 of the Claims Procedure Order dated August 26, 2009, and further **DECLARE**, that the Claims Bar Date (as said term is defined in the Claims Procedure Order) shall not be extended for the purpose of allowing the Province to file a claim based, in whole or in part, on the EPA Orders;

THE WHOLE WITH COSTS.

Montréal, January 20, 2010

Stikeman Elliott

Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, Alice Minville, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am a Senior Legal Counsel of Abitibi-Consolidated Inc.;

2. All the facts alleged in the *Amended Contestation of the Motion for a Declaration Regarding Orders Issued Pursuant to the Environmental Protection Act, S.N.L. 2002, Chap. E-14.02* are true.

AND I HAVE SIGNED

Alice Minville

ALICE MINVILLE

Solemnly declared before me at Montréal, on the 20th day of January, 2010

Louise Portelance #122607

Commissioner for oaths

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

N°. 500-11-036133-094

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. *et al*

Debtors

- and -
ERNST & YOUNG INC.

Monitor

- and -
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

Petitioner

BS0350 n/dos.: 041053-1170

<u>AMENDED</u> CONTESTATION OF THE MOTION FOR A DECLARATION REGARDING ORDERS ISSUED PURSUANT TO THE *ENVIRONMENTAL PROTECTION ACT*, S.N.L. 2002, CHAP. E-14.02

ORIGINAL

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CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.,

And

ABITIBI-CONSOLIDATED INC.,

And

BOWATER CANADIAN HOLDINGS INC.,

And

the other Petitioners listed herein

Debtors

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNLAND AND LABRADOR

Petitioner

<u>AMENDED</u> LIST OF EXHIBITS OF THE DEBTORS

(Contestation of the Motion for a Declaration Regarding Orders Issued Pursuant to the Environmental Protection Act, S.N.L. 2002, Chap. E-14.02)

DESCRIPTION		TAB
D-1:	Letter from Abitibi's counsel to the Province dated October, 21, 2009	1
D-2:	*Labrador Linerboard Limited Agreement Act 1979 Repeal Act*, SNL 2008 c42	2
D-3:	Letter to the Honourable Charlene Johnson, Minister of Environment and Conservation dated November 26, 2009	3
D-4:	May 29, 2009 order issued by the Province	4
D-5:	July 24, 2009 decision issued by the Province	5
D-6:	Cover letter and Notices of Appeal concerning the EPA Orders	6

Montréal, this 20th day of January, 2010

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Debtors

EXHIBIT D-6

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January 11, 2010

Hand Delivered

Ms. Donna Ballard
Director - Civil Division
Government of Newfoundland and Labrador
Department of Justice
P. O. Box 8700
St. John's NL A1B 4J6

Dear Ms. Ballard:

Re: Abitibi-Consolidated Inc. - Appeals of November 12, 2009 Ministerial Orders issued under the *Environmental Protection Act*

Further to your confirmation that you will accept service in this regard, for which I thank you, I transmit five (5) separate Notices of Appeal (original and copy of each Notice of Appeal) respecting the November 12, 2009 Ministerial Orders issued by the Minister of Environment and Conservation under the *Environmental Protection Act* against Abitibi-Consolidated Inc. in respect of the Buchans, Grand Falls mill, Logging Camps, Botwood and Stephenville sites, and being described as:

1. Notice of Appeal of the Buchans Ministerial Order;

2. Notice of Appeal of the Grand Falls Ministerial Order;

3. Notice of Appeal of the Logging Camps Ministerial Order;

4. Notice of Appeal of the Botwood Ministerial Order; and

5. Notice of Appeal of the Stephenville Ministerial Order.

I also transmit two copies of the "Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders". To be clear, the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders are delivered in support of all of Abitibi-Consolidated Inc.'s Appeals.

Could you please endorse your service receipt on behalf of the Minister on each of the copies of the five (5) Notices of Appeal provided herewith and return same to me.

We look forward to the Minister's decision respecting these appeals.

Yours very truly,

Stewart McKelvey

Colm St. Roch Seviour

CSS/sh

Enclosures (7)

Service accepted on behalf of the Minister of Environment & Conservation.

[illegible]

11 Jan 20[illegible]

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

NOTICE OF APPEAL (BUCHANS MINISTERIAL ORDER)

Pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.3.

This notice of appeal comprises formal notice of Abitibi-Consolidated Inc.'s appeal to the Minister of Environment and Conservation (the "Minister") pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.2, of the *Ministerial Order under the **Environmental Protection Act** Section 99* dated November 12, 2009 respecting lands at Buchans, Newfoundland and Labrador (the "Buchans Ministerial Order").

Abitibi-Consolidated Inc. ("ACI") hereby appeals the Buchans Ministerial Order on the following grounds:

1. The Buchans 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 in that cause in the Superior Court of the Province of Quebec, District of Montreal known as *In the Matter of the Plan of Compromise or Arrangement of: AbitibiBowater Inc. and Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. and The other Petitioners listed in Schedules "A", "B" and "C" Petitioners and Ernst & Young Inc. Monitor*, being cause No. 500-11-036133-094, which Order, as amended by the Amended Initial Order dated April 22, 2009 and as extended by the First Stay Period Extension Order dated May 14, 2009 (collectively the "CCAA Order") provides in relevant part as follows:

> "**FOR THESE REASONS, THE COURT ORDERS** 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 whenever taken (collectively the "Proceedings") **may be commenced or proceeded with by anyone, whether a...government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions** (collectively, "Persons" and, individually, a "Person") **against or in respect of the Petitioners**...or any of the present or future property, assets, rights and undertakings of the Petitioners...of any nature and in any location, whether held directly or indirectly by the Petitioners...in any capacity whatsoever...and all proceedings already commenced against the Petitioners...or any of the Property, are stayed and suspended..." (emphasis added).

ACI is a Petitioner under the CCAA Order. A true copy of the CCAA Order is included at Tab A of the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders (the "Reference Documents") delivered with this Notice of Appeal.

2. Additionally, or alternatively, the Buchans Ministerial Order is illegal and ineffective in law by reason of:

   (a) the Minister's failure to observe principles of natural justice, and in particular the principle *audi alteram partem*, by issuing the Buchans Ministerial Order prior to any consultation with or notification to ACI of her intent to do so and failing to afford ACI the right to respond, object or make representations in respect of the matters raised thereby, and by delivering the Environmental Assessment Report of Government's environmental consultant, Conestoga-Rovers & Associates ("CRA") referred to in the Buchans Ministerial Order ("the CRA Report") only at the same time as the time of service of the Buchans Ministerial Order upon ACI; and

   (b) the absence in the Buchans Ministerial Order, the Minister's relative Statement of Reasons for Order or the CRA Report of any facts, evidence, or other basis whatsoever for the Minister's purported opinion in the Buchans Ministerial Order that the releases of substances complained of cause an "adverse effect" within the intent and meaning of that defined term in the *Environmental Protection Act*, which is required to validate an order issued under section 99(b) of the *Environmental Protection Act.*

3. Additionally, or alternatively, the Buchans Ministerial Order is illegal and ineffective as constituting an improperly purposed, unreasonable and bad faith exercise of discretionary power by the Minister under section 99 of the *Environmental Protection Act*, for the following reasons:

   (a) the Buchans Ministerial Order is not the product of the Minister's ordinary course environmental regulation but instead represents a reactive and an exceptional and targeted assessment of ACI in the context of the CCAA proceedings and the proceedings commenced under the *North American Free Trade Agreement* ("NAFTA") against the Government of Canada by ACI's parent company, AbitibiBowater Inc., by reason of the enactment by the Government of

Newfoundland and Labrador (the "Government") of the *Abitibi-Consolidated Rights and Assets Act*, a confiscatory and illegal expropriation Act;

(b) the CRA Report, in being addressed to and prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, was prepared in contemplation of litigation and not in contemplation of the Minister's ordinary course *bona fide* environmental regulation;

(c) the Buchans Ministerial Order and associated CRA Report raise wholly new environmental issues and concerns notwithstanding the fact that the Buchans mine closed in 1984 and the Buchans site has been extensively monitored by the Minister and her predecessors since at least 1984, including pursuant to formal environmental management and monitoring plans to which the Minister and her predecessors have been party since at least 1991;

(d) the effect of the Buchans Ministerial Order is to purport to require ACI to improve the value of Government's own property (the areas covered by the Buchans Ministerial Order having been transferred or surrendered to Government or expropriated by Government pursuant to the *Abitibi-Consolidated Rights and Assets Act*) for the benefit of Government; and

(e) in ignoring the alleged contamination causation or contributions at the Buchans areas discussed in the CRA Report by third parties including Atlantic Barite Limited, the Town of Buchans and Government, the CRA Report and the Minister's purported exercise of discretion in promulgating the Buchans Ministerial Order is selective and discriminatory.

4. Additionally, or alternatively, the Buchans Ministerial Order is illegal and ineffective in law to the extent that it relates or purports to relate to that area at Buchans known as the "Tailings Spill Area" because the Minister is *functus officio* in relation to the issuance of any further or other environmental remediation orders under section 99 of the *Environmental Protection Act* respecting the Tailings Spill Area by reason of her issuance, on May 29, 2009, of a section 99 Ministerial Order against ACI requiring ACI's submission of remediation plans for the Tailings Spill Area and requiring ACI's completion of Tailings Spill Area remediation actions, in respect of which May 29, 2009 section 99 Ministerial Order ACI appealed and the Minister purported to render a Decision on Appeal on or about July 24, 2009 whereby she purported to stay the May 29, 2009 section 99 Ministerial Order (true copies of which May 29, 2009 Ministerial Order, ACI's Notice of Appeal and the Minister's Decision on Appeal being included at Tab "B" of the Reference Documents).

5. ACI is not and has not for a considerable time been the owner of the real property (surface and mineral) rights which are relevant to the Buchans Ministerial Order or the CRA Report, as is evidenced by the following:

(a) ACI is neither the legal nor the beneficial owner of the lands or mineral rights to which the Buchans Ministerial Order pertains by reason of (i) a November 14, 1994 Indenture of Surrender made by Abitibi Price Inc. and Asarco Incorporated in favour of the Crown in Right of the Province of Newfoundland

("Government"), which Indenture of Surrender is hereinafter referred to as the "1994 Mineral Rights Surrender"; (ii) an indenture of conveyance dated June 28, 1978 made by Price (Nfld.) Pulp & Paper Limited, Terra Nova Properties Ltd. and Asarco Incorporated in favour of Government; and (iii) an indenture of conveyance dated 1979 made between Price (Nfld.) Pulp & Paper Limited, Terra Nova Properties Limited and Asarco Incorporated in favour of the Government (true copies of which instruments are included in the Reference Documents respectively as Tabs "C", "D" and "E") and by reason of the expropriation by Government of all of ACI's residual interests in such lands pursuant to the *Abitibi-Consolidated Rights and Assets Act*;

(b) A Newfoundland and Labrador corporation, Buchans River Ltd., is the holder of exclusive rights to explore for and obtain a mining lease to the tailings and minerals at Buchans pursuant to Grouped Extended Map Staked License No. 010551M dated December 15, 2004 issued to Buchans River Ltd. pursuant to the *Mineral Act* (the "Buchans River Mineral License"), a true copy of which Buchans River Mineral License is included in the Reference Documents as Tab "F"; such exclusive proprietary rights to the minerals and tailings contained in the Buchans River Mineral License are conferred upon Buchans River Ltd. pursuant to:

(i) section 23 of the *Mineral Act*, which confers upon a licensee "the exclusive right to explore for minerals, in, on or under the area of land described in the license";

(ii) section 2(f) of the *Mineral Act*, which defines "mineral" to include "minerals contained in mine tailings"; and

(iii) section 31(2) of the *Mineral Act* which confers upon a license-holder "the right to the issuing of a mining lease";

(c) Buchans River Ltd. and another mineral explorationist, Dr. John Tuach, are the holders, respectively, of additional Map Staked License Nos. 011795M and 011683M issued in respect of lands and lands covered by water at the mouth of Buchans River at the area of its inflow into Red Indian Lake (the "Buchans River Delta Licenses", copies of which are included as Tab "G" of the Reference Documents), which cover an area identified in the CRA Report as a new 'potential area of concern' at the Buchans River delta (PAOC 31 in the CRA Report) requiring a river diversion and sediment capping remedial solution having a cost in excess of $13,000,000.00;

(d) Another Newfoundland and Labrador corporation, Atlantic Barite Limited, is the holder of exclusive mining rights respecting barite in tailings at Buchans pursuant to Mining Lease 158 and Mining Lease 198 issued pursuant to the *Mineral Act* (the "ABL Mining Leases", true copies of which ABL Mining Leases are included in the Reference Documents as Tab "H"); such exclusive mining rights contained in the ABL Mining Leases are conferred upon Atlantic Barite Limited pursuant to section 31(c) of the *Mineral Act*, which confers upon a lessee the exclusive right to "develop, extract, remove, deal with, sell, mortgage, or otherwise dispose of all the unalienated minerals in, on or under the land described in the lease";

(e) Pursuant to the 1994 Mineral Rights Surrender, the Government became vested with all right, title and interest to all mineral rights, including tailings and minerals in the Buchans area, and remains the owner of such rights as of the date hereof subject to the mineral rights granted by Government to Buchans River Ltd., to Dr. John Tuach and to Atlantic Barite Limited in the Buchans River Mineral License, the Buchans River Delta Licenses, and the ABL Mining Leases;

(f) The Buchans River Mineral License, the Buchans River Delta Licenses and the ABL Mining Leases grant exclusive mineral rights variously to Buchans River Limited, to Dr. John Tuach and to Atlantic Barite Limited, and to comply with the Buchans Ministerial Order would require ACI to interfere with such rights, which would constitute an offence under the *Mineral Act* and expose ACI to conviction and fine under Section 42 of the *Mineral Act*; and

(g) Pursuant to the June 28, 1978 and the 1979 conveyances to Government referenced above, and pursuant to the *Abitibi-Consolidated Rights and Assets Act*, Government is vested with all surface and other real property rights to the Buchans area of Newfoundland and Labrador, and to comply with the Buchans Ministerial Order would require ACI to interfere with such rights, which it has no right, title or authority to do.

6. The Buchans Ministerial Order is in error in numerous significant respects, including as to the following:

(a) the Buchans Ministerial Order asserts that ACI "operated and was the person responsible for mining operations" at Buchans, Newfoundland and Labrador, which assertion is demonstrably wrong, as the former Buchans mine was at all material times operated by Asarco Incorporated or its predecessor American Smelting and Refining Company, as is more particularly evidenced by the Co-Tenancy Agreement dated January 1, 1976 made among Terra Nova Properties Ltd., The MacLean Mining Company Limited, Price (Nfld.) Pulp & Paper Limited, and Asarco Incorporated (the "Co-Tenancy Agreement", a true copy of which is included in the Reference Documents as Tab "I") pursuant to Article 5 of which Co-Tenancy Agreement Asarco Incorporated, and not ACI, was designated to be the operator, or "Production Manager", of the Buchans mine, a fact which is or should be known to the Minister of Environment and Conservation; and

(b) the Buchans Ministerial Order asserts that ACI is a 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 is evidenced by the following:

(i) not only is ACI not the owner of the lands or mineral rights to which the Buchans Ministerial Order pertains, and is not the former operator of or person responsible for the Buchans mine as is asserted by the Buchans Ministerial Order, but the surface and mineral rights asserted to be the source of the releases complained of in the Buchans Ministerial Order are owned by Government subject to the Buchans River Mineral License, the Buchans River Delta Licenses and the ABL Mining Leases;

(ii) as the Minister knows or ought to know, the releases complained of in the Buchans Ministerial Order were and are being caused in whole or in part by the activities and operations of third parties other than ACI, as follows:

(A) releases or discharges from the operations of Atlantic Barite Limited, including such releases or discharges which have caused and continue to cause the seepage of metal rich water from the Atlantic Barite Limited supplemental tailings pond into Mucky Ditch within the Town of Buchans, and liquid discharges from the Atlantic Barite Limited process building directly into Mucky Ditch within the Town of Buchans,

(B) releases or discharges of effluent by the Town of Buchans from the Buchans Stadium (in particular by way of drainage from the Zamboni garage) into the Mucky Ditch culvert within the Town of Buchans, and from surface water runoff from a substantial area of the Town of Buchans, which contribute to the contaminant load of Mucky Ditch within the Town of Buchans, and

(C) releases or discharges which are being further caused or contributed in whole or in part by the activities and operations of Government in undertaking the design and construction of an inadequately designed and improperly installed outflow culvert proximate to the existing weir in tailings pond no. 1 at the Buchans site in November, 2009, which activities are causing or contributing to the discharge of effluent at Buchans,

of which releases or discharges by such third parties the Minister has actual notice by reason of the March, 2009 Former Asarco Mine Site Phase I Environmental Site Assessment report disclosed to the Department of Environment and Conservation (true copies of the March 17, 2009 transmittal correspondence and relevant extracted pages from which document are included in the Reference Documents as Tab "J"), and by reason of the November 26, 2009 notice correspondence by ACI's counsel to the Minister, a true copy of which is included at Tab "K" of the Reference Documents, and the Buchans Ministerial Order in purporting to single out ACI as the person responsible required to remediate such releases is discriminatory and unlawful.

7. The CRA Report referenced in the Buchans Ministerial Order is severely flawed in a number of respects, including the following:

(a) the CRA Report states that it was prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, and is thus on its face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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 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;

(g) 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;

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

(i) 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

(j) 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.

8. In October, 2008, ACI successfully appealed against Orders of the Occupational Health & Safety Division, Department of Government services, issued under Section 32 of the *Occupational Health & Safety Act*, RSNL 1990 c.O-3, on the same basis as set out in paragraph 5 of this within Notice of Appeal (a true copy of which decision is included as Tab "L" of the Reference Documents).

9. For the reasons set out in paragraphs 5, 6, 7 and 8 of this Notice of Appeal, ACI is not a "person responsible" within the meaning of Section 99 of the *Environmental Protection Act*.

10. Additionally, or alternatively, if the Buchans Ministerial Order is valid and if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Ministerial Order, which is not admitted but is expressly denied for the reasons aforesaid, then the Ministerial Order is time-barred by the provisions of the *Limitations Act*, SNL 1995 c.L-16.1, as amended, for the following reasons:

(a) the *Limitations Act* applies to actions by the Crown;

(b) the conduct of ACI complained of must relate to the time period prior to 1984, when the Buchans mine was closed or, alternatively, to the time period prior to which ACI divested itself of surface, mineral and tailings rights in the area covered by the Buchans Ministerial Order, and in any event prior to November 14, 1994, the date of the 1994 Mineral Rights Surrender;

(c) the area covered by the Buchans Ministerial Order has since the Buchans mine closure in 1984 been extensively monitored by the Minister and her predecessors, including pursuant to the 1991 Environmental Compliance Schedule and successive annual Action Plans (true copies of which Environmental Compliance Schedule and the 2007 Action Plan being included as Tab "M" of the Reference Documents), and the Minister or her predecessors knew or ought to have known of the releases of substances complained of in the Buchans Ministerial Order since in or about the year 1984 or, alternatively, since at least 1991;

(d) the orders set out in the Buchans Ministerial Order are not obligations arising from a statute within the meaning of section 6(1)(f) of the *Limitations Act*;

(e) the Buchans Ministerial Order is time-barred by either:

(i) section 5 of the *Limitations Act*, which prescribes a time limitation of two years to bring an action for damages in respect of property whether based on contract, tort or statutory duty, and /or

(ii) section 9 of the *Limitations Act*, which prescribes a time limitation of 6 years to bring an action in respect of which limitation provisions are not prescribed in section 5 to 8 of the *Limitations Act*, or in another Act.

11. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Buchans Ministerial Order, which is not admitted but is expressly denied, then the Buchans Ministerial Order is time-barred by reason of the Minister's and Government's waiver, laches, and acquiescence in respect of the matters complained of in the Buchans Ministerial Order.

12. Such further and other grounds as ACI may advise, and ACI states that it reserves the right to supplement the bases for the within grounds of appeal and to appeal the Buchans Ministerial Order on such further and other grounds as may be appropriate. ACI states that the foregoing grounds of appeal cannot be considered to be exhaustive because, in that ACI is currently involved in a judicial restructuring under the CCAA Order, it has been unable to devote sufficient time and resources to reasonably investigate and fairly respond to the matters raised by the Buchans Ministerial Order.

Dated at St. John's, in Province of Newfoundland and Labrador, this 11th day of January, 2010.

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Legal Counsel for the Minister of Environment and Conservation

Serice accepted on behalf of the Minister of Environment & Conservation

D Dullat
11 Jan 2010

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

NOTICE OF APPEAL
(GRAND FALLS MINISTERIAL ORDER)

Pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.3.

This notice of appeal comprises formal notice of Abitibi-Consolidated Inc.'s appeal to the Minister of Environment and Conservation (the "Minister") pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.2, of the *Ministerial Order under the **Environmental Protection Act** Section 99* dated November 12, 2009 respecting lands at Grand Falls-Windsor, Newfoundland and Labrador (the "Grand Falls Ministerial Order").

Abitibi-Consolidated Inc. ("ACI") hereby appeals the Grand Falls Ministerial Order on the following grounds:

1. The Grand Falls 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 in that cause in the Superior Court of the Province of Quebec, District of Montreal known as *In the Matter of the Plan of Compromise or Arrangement of: AbitibiBowater Inc. and Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. and The other Petitioners listed in Schedules "A", "B" and "C" Petitioners and Ernst & Young Inc. Monitor*, being cause No. 500-11-036133-094, which Order, as amended by the Amended Initial Order dated April 22, 2009 and as extended by the First Stay Period Extension Order dated May 14, 2009 (collectively the "CCAA Order") provides in relevant part as follows:

> "**FOR THESE REASONS, THE COURT ORDERS** 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 whenever taken (collectively the "Proceedings") **may be commenced or proceeded with by anyone, whether a…government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions** (collectively, "Persons" and, individually, a "Person") **against or in respect of the Petitioners**…or any of the present or future property, assets, rights and undertakings of the Petitioners…of any nature and in any location, whether held directly or indirectly by the Petitioners…in any capacity whatsoever…and all proceedings already commenced against the Petitioners…or any of the Property, are stayed and suspended…" (emphasis added).

ACI is a Petitioner under the CCAA Order. A true copy of the CCAA Order is included at Tab A of the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders (the "Reference Documents") delivered with this Notice of Appeal.

2. Additionally, or alternatively, the Grand Falls Ministerial Order is illegal and ineffective in law by reason of:

(a) the Minister's failure to observe principles of natural justice, and in particular the principle *audi alteram partem*, by issuing the Grand Falls Ministerial Order prior to any consultation with or notification to ACI of her intent to do so and failing to afford ACI the right to respond, object or make representations in respect of the matters raised thereby, and by delivering the Environmental Assessment Report of Government's environmental consultant, Conestoga-Rovers & Associates ("CRA") referred to in the Grand Falls Ministerial Order ("the CRA Report") only at the same time as the time of service of the Grand Falls Ministerial Order upon ACI; and

(b) the absence in the Grand Falls Ministerial Order, the Minister's relative Statement of Reasons for Order or the CRA Report of any facts, evidence, or other basis whatsoever for the Minister's purported opinion in the Grand Falls Ministerial Order that the releases of substances complained of cause an "adverse effect" within the intent and meaning of that defined term in the *Environmental Protection Act*, which is required to validate an order issued under section 99(b) of the *Environmental Protection Act.*

3. Additionally, or alternatively, the Grand Falls Ministerial Order is illegal and ineffective as constituting an improperly purposed, unreasonable and bad faith exercise of discretionary power by the Minister under section 99 of the *Environmental Protection Act*, for the following reasons:

(a) the Grand Falls Ministerial Order is not the product of the Minister's ordinary course environmental regulation but instead represents a reactive and an exceptional and targeted assessment of ACI in the context of the CCAA proceedings and the proceedings commenced under the *North American Free Trade Agreement* ("NAFTA") against the Government of Canada by ACI's parent company, AbitibiBowater Inc., by reason of the enactment by the Government of

Newfoundland and Labrador (the "Government") of the *Abitibi-Consolidated Rights and Assets Act*, a confiscatory and illegal expropriation Act;

(b) the CRA Report, in being addressed to and prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, was prepared in contemplation of litigation and not in contemplation of the Minister's ordinary course *bona fide* environmental regulation;

(c) the Grand Falls Ministerial Order and associated CRA Report raise wholly new environmental issues and concerns notwithstanding the fact that the Grand Falls mill has been extensively monitored by the Minister and her predecessors pursuant to certificates of approval for the Grand Falls mill's operation issued by the Minister or her predecessor to Abitibi-Consolidated Company of Canada;

(d) the CRA Report focuses primarily on anticipated issues which could arise as and when the Grand Falls mill site is decommissioned and demolished, and as Government is now the owner of the Grand Falls mill and associated property by reason of its expropriation pursuant to the *Abitibi-Consolidated Rights and Assets Act*, the expense of safely demolishing the mill and removing it properly belong to Government and not to ACI, and the anticipated environmental impacts of the demolition process identified by the CRA Report cannot properly be attributed to ACI pursuant to the Grand Falls Ministerial Order; and

(e) the effect of the Grand Falls Ministerial Order is to purport to require ACI to improve the value of Government's own property for the benefit of Government.

4. The Grand Falls Ministerial 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 is evidenced by the Certificates of Approval Nos. AA01-105395A and AA06-105487 dated respectively December 1, 2001 and October 15, 2006 issued to Abitibi-Consolidated Company of Canada (the "ACCC Certificates of Approval", included as Tab "N" of the Reference Documents) wherein Abitibi-Consolidated Company of Canada, and not ACI, is identified as the operator of the pulp and paper mill at Grand Falls-Windsor, Newfoundland and Labrador.

5. Pursuant to the *Abitibi-Consolidated Rights and Assets Act*, Government is and has since December 16, 2008 been vested with all surface and other real property rights to the area of Newfoundland and Labrador to which the Grand Falls Ministerial Order pertains, including without limitation the Grand Falls mill and associated mill property, and to comply with the Grand Falls Ministerial Order would require ACI to interfere with such rights, which it has no right, title or authority to do.

6. The CRA Report referenced in the Grand Falls Ministerial Order is severely flawed in a number of respects, including the following:

(a) the CRA Report states that it was prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, and is thus on its face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

(b) 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;

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

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

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

(l) 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

(m) 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.

7. For the reasons set out in paragraphs 4, 5 and 6 of this Notice of Appeal, ACI has not since at least 2001 been the operator of the Grand Falls mill and is not a "person responsible" within the meaning of Section 99 of the *Environmental Protection Act*;

8. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Grand Falls Ministerial Order, which is not admitted but is expressly denied for the reasons aforesaid, then the Grand Falls Ministerial Order is time-barred by the provisions of the *Limitations Act*, SNL 1995 c.L-16.1, as amended, for the following reasons:

(a) the *Limitations Act* applies to actions by the Crown;

(b) the area covered by the Grand Falls Ministerial Order has always been extensively monitored by the Minister and her predecessors including pursuant to the ACCC Certificates of Approval, and the conduct of ACI complained of must relate to the time period prior to, at the earliest, December 1, 2001, being the date of ACCC Certificate of Approval No. AA01-105395A;

(c) the orders set out in the Grand Falls Ministerial Order are not obligations arising from a statute within the meaning of section 6(1)(f) of the *Limitations Act*;

(d) the Grand Falls Ministerial Order is time-barred by either:

(i) section 5 of the *Limitations Act*, which prescribes a time limitation of two years to bring an action for damages in respect of property whether based on contract, tort or statutory duty, and /or

(ii) section 9 of the *Limitations Act*, which prescribes a time limitation of 6 years to bring an action in respect of which limitation provisions are not prescribed in section 5 to 8 of the *Limitations Act*, or in another Act.

9. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Grand Falls Ministerial Order, which is not admitted but is expressly denied, then the Grand Falls Ministerial Order is time-barred by reason of the Minister's and Government's waiver, laches, and acquiescence in respect of the matters complained of in the Grand Falls Ministerial Order.

10. Such further and other grounds as ACI may advise, and ACI states that it reserves the right to supplement the bases for the within grounds of appeal and to appeal the Grand Falls Ministerial Order on such further and other grounds as may be appropriate. ACI states that the foregoing grounds of appeal cannot be considered to be exhaustive because, in that ACI is currently involved in a judicial restructuring under the CCAA Order, it has been unable to devote sufficient time and resources to reasonably investigate and fairly respond to the matters raised by the Grand Falls Ministerial Order.

Dated at St. John's, in Province of Newfoundland and Labrador, this 11th day of January, 2010.

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Service accepted on behalf of the Minister of Environment & Conservation

11 Jan 2010

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

Notice of Appeal
(Logging Camps Ministerial Order)

Pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.3.

This notice of appeal comprises formal notice of Abitibi-Consolidated Inc.'s appeal to the Minister of Environment and Conservation (the "Minister") pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.2, of the *Ministerial Order under the **Environmental Protection Act** Section 99* dated November 12, 2009 respecting logging camp lands in central Newfoundland and Labrador (the "Logging Camps Ministerial Order").

Abitibi-Consolidated Inc. ("ACI") hereby appeals the Logging Camps Ministerial Order on the following grounds:

1. The Logging Camps 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 in that cause in the Superior Court of the Province of Quebec, District of Montreal known as *In the Matter of the Plan of Compromise or Arrangement of: AbitibiBowater Inc. and Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. and The other Petitioners listed in Schedules "A", "B" and "C" Petitioners and Ernst & Young Inc. Monitor*, being cause No. 500-11-036133-094, which Order, as amended by the Amended Initial Order dated April 22, 2009 and as extended by the First Stay Period Extension Order dated May 14, 2009 (collectively the "CCAA Order") provides in relevant part as follows:

> "**FOR THESE REASONS, THE COURT ORDERS** 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 whenever taken (collectively the "Proceedings") **may be commenced or proceeded with by anyone, whether a...government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions** (collectively, "Persons" and, individually, a "Person") **against or in respect of the Petitioners**...or any of the present or future property, assets, rights and undertakings of the Petitioners...of any nature and in any location, whether held directly or indirectly by the Petitioners...in any capacity whatsoever...and all proceedings already commenced against the Petitioners...or any of the Property, are stayed and suspended..." (emphasis added).

ACI is a Petitioner under the CCAA Order. A true copy of the CCAA Order is included at Tab A of the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders (the "Reference Documents") delivered with this Notice of Appeal.

2. Additionally, or alternatively, the Logging Camps Ministerial Order is illegal and ineffective in law by reason of:

   (a) the Minister's failure to observe principles of natural justice, and in particular the principle *audi alteram partem*, by issuing the Logging Camps Ministerial Order prior to any consultation with or notification to ACI of her intent to do so and failing to afford ACI the right to respond, object or make representations in respect of the matters raised thereby, and by delivering the Environmental Assessment Report of Government's environmental consultant, Conestoga-Rovers & Associates ("CRA") referred to in the Logging Camps Ministerial Order ("the CRA Report") only at the same time as the time of service of the Logging Camps Ministerial Order upon ACI; and

   (b) the absence in the Logging Camps Ministerial Order, the Minister's relative Statement of Reasons for Order or the CRA Report of any facts, evidence, or other basis whatsoever for the Minister's purported opinion in the Logging Camps Ministerial Order that the releases of substances complained of cause an "adverse effect" within the intent and meaning of that defined term in the *Environmental Protection Act*, which is required to validate an order issued under section 99(b) of the *Environmental Protection Act.*

3. Additionally, or alternatively, the Logging Camps Ministerial Order is illegal and ineffective as constituting an improperly purposed, unreasonable and bad faith exercise of discretionary power by the Minister under section 99 of the *Environmental Protection Act*, for the following reasons:

   (a) the Logging Camps Ministerial Order is not the product of the Minister's ordinary course environmental regulation but instead represents a reactive and an exceptional and targeted assessment of ACI in the context of the CCAA proceedings and the proceedings commenced under the *North American Free Trade Agreement* ("NAFTA") against the Government of Canada by ACI's parent company, AbitibiBowater Inc., by reason of the enactment by the Government of

Newfoundland and Labrador (the "Government") of the *Abitibi-Consolidated Rights and Assets Act*, a confiscatory and illegal expropriation Act;

(b) the CRA Report, in being addressed to and prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, was prepared in contemplation of litigation and not in contemplation of the Minister's ordinary course *bona fide* environmental regulation;

(c) the Logging Camps Ministerial Order and associated CRA Report raise wholly new environmental issues and concerns notwithstanding the fact that these sites have been historically extensively inspected and assessed by the Minister and her predecessors and most of these sites have been closed for a considerable period of time;

(d) the effect of the Logging Camps Ministerial Order is to purport to require ACI to improve the value of Government's own property (the properties comprising the Logging Camps having been expropriated by Government pursuant to the *Abitibi-Consolidated Rights and Assets Act*) for the benefit of Government; and

(e) in ignoring the alleged contamination causation or contributions by third parties including cottage dwellers and recreational users, the Minister's exercise of discretion in promulgating the Logging Camps Ministerial Order is selective and discriminatory.

4. ACI is not and has not since December 16, 2008 been an owner of any interest in the real property rights which are relevant to the Logging Camps Ministerial Order, as is evidenced by the following:

(a) ACI is neither the legal nor the beneficial owner of the lands to which the Logging Camps Ministerial Order pertains by reason of the expropriation by Government of all of ACI's residual interests in such lands pursuant to the *Abitibi-Consolidated Rights and Assets Act*; and

(b) pursuant to the *Abitibi-Consolidated Rights and Assets Act*, Government is vested with all surface and other real property rights to the areas of Newfoundland and Labrador to which the Logging Camps Ministerial Order pertains, and to comply with the Logging Camps Ministerial Order would require ACI to interfere with such rights, which it has no right, title or authority to do.

5. The Logging Camps Ministerial Order is in error in numerous significant respects, including as to the following:

(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:

(i) by reference to the ACCC Certificates of Approval (Reference Documents, Tab N), wherein Abitibi-Consolidated Company of Canada is identified as the operator of the former Grand Falls and Stephenville pulp and paper mills, it will be apparent that ACI was not the operator of any logging camps in Newfoundland and Labrador since at least 2001, and the lands to which the Logging Camps Ministerial Order pertains were in any event expropriated by Government effective December 16, 2009;

(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 Borney 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 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 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.

6. The CRA Report referenced in the Logging Camps Ministerial Order is severely flawed in a number of respects, including the following:

(a) the CRA Report states that it was prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, and is thus on its face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

(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;

(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;

(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;

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

(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;

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

(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

(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.

7. For the reasons set out in paragraphs 4, 5 and 6 of this Notice of Appeal, ACI has not since at least 2001 been the operator of the logging camps and is not the "person responsible" within the meaning of Section 99 of the *Environmental Protection Act*.

8. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Logging Camps Ministerial Order, which is not admitted but is expressly denied for the reasons aforesaid, then the Logging Camps Ministerial Order is time-barred by the provisions of the *Limitations Act*, SNL 1995 c.L-16.1, as amended, for the following reasons:

(a) the *Limitations Act* applies to actions by the Crown;

(b) all of the logging camps identified by AMEC were closed prior to November 12, 2003 with the only possible exception being the Black Duck logging camp (closure estimated to have occurred sometime in 2009) and accordingly for nearly all of the logging camps covered by the Logging Camps Ministerial Order, the conduct of ACI complained of must relate to the time period prior to November 12, 2003;

(c) the orders set out in the Logging Camps Ministerial Order are not obligations arising from a statute within the meaning of section 6(1)(f) of the *Limitations Act*;

(d) the Logging Camps Ministerial Order is time-barred by either:

(i) section 5 of the *Limitations Act*, which prescribes a time limitation of two years to bring an action for damages in respect of property whether based on contract, tort or statutory duty, and /or

(ii) section 9 of the *Limitations Act*, which prescribes a time limitation of 6 years to bring an action in respect of which limitation provisions are not prescribed in section 5 to 8 of the *Limitations Act*, or in another Act.

9. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Logging Camps Ministerial Order, which is not admitted but is expressly denied, then the Logging Camps Order is time-barred by reason of the Minister's and Government's waiver, laches, and acquiescence in respect of the matters complained of in the Logging Camps Ministerial Order.

10. Such further and other grounds as ACI may advise, and ACI states that it reserves the right to supplement the bases for the within grounds of appeal and to appeal the Logging Camps Ministerial Order on such further and other grounds as may be appropriate. ACI states that the foregoing grounds of appeal cannot be considered to be exhaustive because, in that ACI is currently involved in a judicial restructuring under the CCAA Order, it has been unable to devote sufficient time and resources to reasonably investigate and fairly respond to the matters raised by the Logging Camps Ministerial Order.

Dated at St. John's, in Province of Newfoundland and Labrador, this 11th day of January, 2010.

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Service accepted on behalf of the Minister of Environment & Conservation
11 Jan 2010

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

NOTICE OF APPEAL
(BOTWOOD MINISTERIAL ORDER)

Pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.3.

This notice of appeal comprises formal notice of Abitibi-Consolidated Inc.'s appeal to the Minister of Environment and Conservation (the "Minister") pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.2, of the *Ministerial Order under the* ***Environmental Protection Act*** *Section 99* dated November 12, 2009 respecting lands at Botwood, Newfoundland and Labrador (the "Botwood Ministerial Order").

Abitibi-Consolidated Inc. ("ACI") hereby appeals the Botwood Ministerial Order on the following grounds:

1. The Botwood 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 in that cause in the Superior Court of the Province of Quebec, District of Montreal known as *In the Matter of the Plan of Compromise or Arrangement of: AbitibiBowater Inc. and Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. and The other Petitioners listed in Schedules "A", "B" and "C" Petitioners and Ernst & Young Inc. Monitor*, being cause No. 500-11-036133-094, which Order, as amended by the Amended Initial Order dated April 22, 2009 and as extended by the First Stay Period Extension Order dated May 14, 2009 (collectively the "CCAA Order") provides in relevant part as follows:

> "**FOR THESE REASONS, THE COURT ORDERS** 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 whenever taken (collectively the "Proceedings") **may be commenced or proceeded with by anyone, whether a...government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions** (collectively, "Persons" and, individually, a "Person") **against or in respect of the Petitioners**...or any of the present or future property, assets, rights and undertakings of the Petitioners...of any nature and in any location, whether held directly or indirectly by the Petitioners...in any capacity whatsoever...and all proceedings already commenced against the Petitioners...or any of the Property, are stayed and suspended..." (emphasis added).

ACI is a Petitioner under the CCAA Order. A true copy of the CCAA Order is included at Tab A of the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders (the "Reference Documents") delivered with this Notice of Appeal.

2. Additionally, or alternatively, the Botwood Ministerial Order is illegal and ineffective in law by reason of:

   (a) the Minister's failure to observe principles of natural justice, and in particular the principle *audi alteram partem*, by issuing the Botwood Ministerial Order prior to any consultation with or notification to ACI of her intent to do so and failing to afford ACI the right to respond, object or make representations in respect of the matters raised thereby, and by delivering the Environmental Assessment Report of Government's environmental consultant, Conestoga-Rovers & Associates ("CRA") referred to in the Botwood Ministerial Order ("the CRA Report") only at the same time as the time of service of the Botwood Ministerial Order upon ACI; and

   (b) the absence in the Botwood Ministerial Order, the Minister's relative Statement of Reasons for Order or the CRA Report of any facts, evidence, or other basis whatsoever for the Minister's purported opinion in the Botwood Ministerial Order that the releases of substances complained of cause an "adverse effect" within the intent and meaning of that defined term in the *Environmental Protection Act*, which is required to validate an order issued under section 99(b) of the *Environmental Protection Act.*

3. Additionally, or alternatively, the Botwood Ministerial Order is illegal and ineffective as constituting an improperly purposed, unreasonable and bad faith exercise of discretionary power by the Minister under section 99 of the *Environmental Protection Act*, for the following reasons:

   (a) the Botwood Ministerial Order is not the product of the Minister's ordinary course environmental regulation but instead represents a reactive and an exceptional and targeted assessment of ACI in the context of the CCAA proceedings and the proceedings commenced under the *North American Free Trade Agreement*

("NAFTA") against the Government of Canada by ACI's parent company, AbitibiBowater Inc., by reason of the enactment by the Government of Newfoundland and Labrador (the "Government") of the *Abitibi-Consolidated Rights and Assets Act*, a confiscatory and illegal expropriation Act;

(b) the CRA Report, in being addressed to and prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, was prepared in contemplation of litigation and not in contemplation of the Minister's ordinary course *bona fide* environmental regulation;

(c) the Botwood Ministerial Order and associated CRA Report raise wholly new environmental issues and concerns notwithstanding the fact that the Botwood site has been extensively monitored by the Minister and her predecessors for a considerable time period prior to the date of the Botwood Ministerial Order; and

(d) in ignoring the alleged contamination causation or contributions at the Botwood areas discussed in the CRA Report by third parties including Asarco Incorporated, the Grand Falls Central Railway Company and the Town of Botwood, the CRA Report and the Minister's purported exercise of discretion in promulgating the Botwood Ministerial Order is selective and discriminatory.

4. The Botwood Ministerial Order is in error in asserting 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, in that the releases complained of in the Botwood Ministerial Order were and are being caused in whole or in part by the activities and operations of third parties other than ACI, as follows:

(a) historically, part of the Botwood facilities were used as the discharge and transshipment port for the ore processed from the former Buchans mine (which closed in 1984) and shipped by Asarco Incorporated, the former Buchans mine operator and "Production Manager", and any releases associated with such operations would be improperly attributed to ACI as the person responsible;

(b) the railway servicing the Botwood shipping operations was historically operated by the Grand Falls Central Railway Company, which corporation is now dissolved, and releases associated with such operations would be improperly attributed to ACI as the person responsible; and

(c) storage and other facilities at Botwood were transferred to the Town of Botwood in the 1980s and used for the storage of construction materials, vehicle servicing and other activities, including an area for a Canada Post Community mail box, and releases associated with such ownership and operations would be improperly attributed to ACI as the person responsible,

and the Botwood Ministerial Order in purporting to single out ACI as the person responsible required to remediate such releases is discriminatory and unlawful.

5. The CRA Report referenced in the Botwood Ministerial Order is severely flawed in a number of respects, including the following:

   (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;

   (b) the CRA Report states that it was prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, and is thus on its face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

   (c) 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;

   (d) 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;

   (e) 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;

   (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;

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

   (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

   (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.

6. For the reasons set out in paragraphs 4 and 5 of this Notice of Appeal, ACI is not a "person responsible" within the meaning of Section 99 of the *Environmental Protection Act*;

7. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Botwood Ministerial Order, which is not admitted but is expressly denied for the reasons aforesaid, then the Botwood Ministerial Order is time-barred by the provisions of the *Limitations Act*, SNL 1995 c.L-16.1, as amended, for the following reasons:

   (a) the *Limitations Act* applies to actions by the Crown;

   (b) the areas covered by the Botwood Ministerial Order have been extensively monitored by the Minister and her predecessors, and the conduct of ACI complained of must relate to the time period prior to November 12, 2003;

   (c) the orders set out in the Botwood Ministerial Order are not obligations arising from a statute within the meaning of section 6(1)(f) of the *Limitations Act*;

   (d) the Botwood Ministerial Order is time-barred by either:

      (i) section 5 of the *Limitations Act*, which prescribes a time limitation of two years to bring an action for damages in respect of property whether based on contract, tort or statutory duty, and /or

      (ii) section 9 of the *Limitations Act*, which prescribes a time limitation of 6 years to bring an action in respect of which limitation provisions are not prescribed in section 5 to 8 of the *Limitations Act*, or in another Act.

8. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Botwood Ministerial Order, which is not admitted but is expressly denied, then the Botwood Ministerial Order is time-barred by reason of the Minister's and Government's waiver, laches, and acquiescence in respect of the matters complained of in the Botwood Ministerial Order.

9. Such further and other grounds as ACI may advise, and ACI states that it reserves the right to supplement the bases for the within grounds of appeal and to appeal the Botwood Ministerial Order on such further and other grounds as may be appropriate. ACI states that the foregoing grounds of appeal cannot be considered to be exhaustive because, in that ACI is currently involved in a judicial restructuring under the CCAA Order, it has been unable to devote sufficient time and resources to reasonably investigate and fairly respond to the matters raised by the Botwood Ministerial Order.

Dated at St. John's, in Province of Newfoundland and Labrador, this 11th day of January, 2010.

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Service accepted on behalf of the Minister of Environment and Conservation

D Ballard
11 Jan 2010

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

NOTICE OF APPEAL (STEPHENVILLE MINISTERIAL ORDER)

Pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.3.

This notice of appeal comprises formal notice of Abitibi-Consolidated Inc.'s appeal to the Minister of Environment and Conservation (the "Minister") pursuant to section 107 of the *Environmental Protection Act*, SNL 2002 c. E-14.2, of the *Ministerial Order under the **Environmental Protection Act** Section 99* dated November 12, 2009 respecting lands at Stephenville, Newfoundland and Labrador (the "Stephenville Ministerial Order").

Abitibi-Consolidated Inc. ("ACI") hereby appeals the Stephenville Ministerial Order on the following grounds:

1. The Stephenville 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 in that cause in the Superior Court of the Province of Quebec, District of Montreal known as *In the Matter of the Plan of Compromise or Arrangement of: AbitibiBowater Inc. and Abitibi-Consolidated Inc. and Bowater Canadian Holdings Inc. and The other Petitioners listed in Schedules "A", "B" and "C" Petitioners and Ernst & Young Inc. Monitor*, being cause No. 500-11-036133-094, which Order, as amended by the Amended Initial Order dated April 22, 2009 and as extended by the First Stay Period Extension Order dated May 14, 2009 (collectively the "CCAA Order") provides in relevant part as follows:

> "**FOR THESE REASONS, THE COURT ORDERS** 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 whenever taken (collectively the "Proceedings") **may be commenced or proceeded with by anyone, whether a...government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions** (collectively, "Persons" and, individually, a "Person") **against or in respect of the Petitioners**...or any of the present or future property, assets, rights and undertakings of the Petitioners...of any nature and in any location, whether held directly or indirectly by the Petitioners...in any capacity whatsoever...and all proceedings already commenced against the Petitioners...or any of the Propery, are stayed and suspended..." (emphasis added).

ACI is a Petitioner under the CCAA Order. A true copy of the CCAA Order is included at Tab A of the Supporting Reference Documents for Appeals of November 12, 2009 Ministerial Orders (the "Reference Documents") delivered with this Notice of Appeal.

2. Additionally, or alternatively, the Stephenville Ministerial Order is illegal and ineffective in law by reason of:

   (a) the Minister's failure to observe principles of natural justice, and in particular the principle *audi alteram partem*, by issuing the Stephenville Ministerial Order prior to any consultation with or notification to ACI of her intent to do so and failing to afford ACI the right to respond, object or make representations in respect of the matters raised thereby, and by delivering the Environmental Assessment Report of Government's environmental consultant, Conestoga-Rovers & Associates ("CRA") referred to in the Stephenville Ministerial Order ("the CRA Report") only at the same time as the time of service of the Stephenville Ministerial Order upon ACI; and

   (b) the absence in the Stephenville Ministerial Order, the Minister's relative Statement of Reasons for Order or the CRA Report of any facts, evidence, or other basis whatsoever for the Minister's purported opinion in the Stephenville Ministerial Order that the releases of substances complained of cause an "adverse effect" within the intent and meaning of that defined term in the *Environmental Protection Act*, which is required to validate an order issued under section 99(b) of the *Environmental Protection Act.*

3. Additionally, or alternatively, the Stephenville Ministerial Order is illegal and ineffective as constituting an improperly purposed, unreasonable and bad faith exercise of discretionary power by the Minister under section 99 of the *Environmental Protection Act*, for the following reasons:

   (a) following the closure of the Stephenville mill in December, 2005, as was required by its Certificate of Approval (see Reference Documents, Tab "O"), Abitibi-

Consolidated Company of Canada, then the operator of the Stephenville mill, proceeded with the decommissioning requirements under the said Stephenville mill Certificate of Approval, including by way of registering the Stephenville mill decommissioning as an undertaking (subsequently approved by the Minister) under section 49 of the *Environmental Protection Act*, a fact of which the Minister is or should be aware, and thereafter proceeding to undertake Phase I and Phase II environmental site assessments of the Stephenville mill with its environmental assessment advisors AMEC Earth and Environmental Inc. (also facts of which the Minister is or should be aware and in fact the Phase II environmental site assessment field data undertaken for the Phase II environmental site assessment having at the request and agreement of the Minister been provided to the Minister's environmental assessment firm, CRA in connection with the preparation and issuance of the CRA Report), the Stephenville Ministerial Order is unnecessary, premature and unjustified in the context of Abitibi-Consolidated Company of Canada's registration of and commencing the necessary actions for the Stephenville mill decommissioning and environmental remediation;

(b) the Stephenville Ministerial Order is not the product of the Minister's ordinary course environmental regulation but instead represents a reactive and an exceptional and targeted assessment of ACI in the context of proceedings commenced under the *North American Free Trade Agreement* ("NAFTA") against the Government of Canada by ACI's parent company, AbitibiBowater Inc., by reason of the enactment by the Government of Newfoundland and Labrador (the "Government") of the *Abitibi-Consolidated Rights and Assets Act*, a confiscatory and illegal expropriation Act;

(c) the CRA Report, in being addressed to and prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, was prepared in contemplation of litigation and not in contemplation of the Minister's ordinary course *bona fide* environmental regulation;

(d) the Stephenville Ministerial Order and associated CRA Report raise wholly new environmental issues and concerns notwithstanding the fact that the Stephenville mill has been extensively monitored by the Minister and her predecessors pursuant to the Stephenville Mill Certificate of Approval dated August 10, 2004, issued by the Minister or her predecessor to Abitibi-Consolidated Company of Canda (a true copy of which ACCC Certificate of Approval is included at Tab "O" of the Reference Documents); and

(e) in ignoring the alleged contamination causation or contributions by third parties including the United States Air Force, Labrador Linerboard Limited and Government, the Minister's exercise of discretion in promulgating the Stephenville Ministerial Order is selective and discriminatory.

4. The Stephenville Ministerial Order is in error in numerous significant respects, including as to the following:

(a) the Stephenville Ministerial Order asserts that ACI "operated and was the person responsible for a pulp and paper mill at Stephenville, Newfoundland and Labrador until December, 2005, and the person responsible for substances at the Stephenville Mill", which assertion is demonstrably wrong, as is evidenced by the ACCC Stephenville Mill Certificate of Approval included as Tab "O" of the Reference Documents wherein Abitibi-Consolidated Company of Canada is identified as the operator of the pulp and paper mill at Stephenville, Newfoundland and Labrador since at least August 10, 2004; and

(b) the Stephenville 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 Stephenville Ministerial Order were and are being caused in whole or in part by the activities and operations of third parties, as follows:

(i) substantial portions of the site of the actual former Abitibi-Consolidated Company of Canada Stephenville newsprint mill served, between 1941 and 1966, as the Harmonville base of the United States Air Force ("USAF") under lease from Government (or its predecessor). During that era, several fuel storage facilities and dump sites for by-products of an air force base were established and are still present today;

(ii) in the late 1960s, following the closure of the Harmonville USAF Base, Government passed legislation which allowed for the construction of a kraft linerboard mill in Stephenville. The costs of the project ballooned, and in May 1972, Government passed legislation allowing a Crown corporation, Labrador Linerboard Limited ("Labrador Linerboard"), to take control of the mill. Production began in 1973 but from the beginning, the mill struggled for financial viability. On August 26, 1977, the Stephenville linerboard mill was closed;

(iii) in 1979, Abitibi Paper Company Limited purchased the assets of Labrador Linerboard, paying $43.5 million for the linerboard mill and its docking and shipping facilities, along with an agreement for the allocation of timber supply. In return, Abitibi Paper Company Limited promised to convert the mill to a newsprint mill with the capacity to produce 150,000 tons per year. The Stephenville newsprint mill was opened in September 1981 and operated until December 2005;

(iv) ACI estimates, based on advice from its environmental consultants AMEC Earth and Environmental Inc. ("AMEC"), that a substantial portion of the significant costs suggested by CRA in the CRA Report to be associated with the remediation of the Stephenville site are directly attributable to the 25 years of intensive use of the site by the USAF and Labrador Linerboard, the whole under the stewardship and responsibility of Government; and

(v) despite being the lessor of the Stephenville site to the USAF and the owner of the Crown corporation for the former Labrador Linerboard operation, the Minister has made no effort to establish Government's own level of responsibility as a "person responsible" under the *Environmental Protection Act*, nor has she taken any steps to pursue Government or such prior occupants under that Act;

and the Stephenville Ministerial Order, in purporting to single out ACI as the person responsible required to remediate such releases, is discriminatory and unlawful.

5. The Environmental Site Assessment Report prepared by Government's environmental assessment firm, Conestoga-Rovers & Associates (the "CRA Report") and referenced in the Stephenville Ministerial Order is severely flawed in a number of respects, including the following:

(a) the CRA Report states that it was prepared for Government's NAFTA/CCAA counsel, WeirFoulds LLP, and is thus on its face produced for the purposes of litigation rather than in pursuit of any *bona fide* statutory duty;

(b) 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;

(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;

(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;

(e) the CRA Report contains 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 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;

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

(g) 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.

6. For the reasons set out in paragraphs 4 and 5 of this Notice of Appeal, ACI has not since at least 2004 been the operator of the Stephenville mill and is not a "person responsible" within the meaning of Section 99 of the *Environmental Protection Act.*

7. Additionally, or alternatively, if ACI, contrary to the submissions aforesaid, is a "person responsible" for the releases complained of in the Stephenville Ministerial Order, which is not admitted but is expressly denied for the reasons aforesaid, then the Stephenville Ministerial Order is time-barred by the provisions of the *Limitations Act*, SNL 1995 c.L-16.1, as amended, for the following reasons:

(a) the *Limitations Act* applies to actions by the Crown;

(b) the area covered by the Stephenville Ministerial Order has been extensively monitored by the Minister and her predecessors, and the conduct of ACI complained of must relate to the time period prior to November 12, 2003;

(c) the orders set out in the Stephenville Ministerial Order are not obligations arising from a statute within the meaning of section 6(1)(f) of the *Limitations Act*;

(d) the Stephenville Ministerial Order is time-barred by either:

(i) section 5 of the *Limitations Act*, which prescribes a time limitation of two years to bring an action for damages in respect of property whether based on contract, tort or statutory duty, and /or

(ii) section 9 of the *Limitations Act*, which prescribes a time limitation of 6 years to bring an action in respect of which limitation provisions are not prescribed in section 5 to 8 of the *Limitations Act*, or in another Act.

8. Such further and other grounds as ACI may advise, and ACI states that it reserves the right to supplement the bases for the within grounds of appeal and to appeal the Stephenville Ministerial Order on such further and other grounds as may be appropriate. ACI states that the foregoing grounds of appeal cannot be considered to be exhaustive because, in that ACI is currently involved in a judicial restructuring under the CCAA

Order, it has been unable to devote sufficient time and resources to reasonably investigate and fairly respond to the matters raised by the Stephenville Ministerial Order.

Dated at St. John's, in Province of Newfoundland and Labrador, this 11th day of January, 2010.

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SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

N°. 500-11-036133-094

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. *et al*

Debtors

- and –
ERNST & YOUNG INC.

Monitor

- and –
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

Petitioner

BS0350 **n/dos.:** 041053-1170

AMENDED LIST OF EXHIBITS AND EXHIBIT D-6

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ORIGINAL

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