

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

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
MONTREAL, 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*

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. Abitibi is currently not in a position to appeal the EPA Orders or 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, silviculture 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 appealing the EPA Orders or 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 as 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. Despite the foregoing, Abitibi is not in a position to appeal or seek judicial review of the EPA Orders at this time. 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 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. Stephenville

- 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 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. Buchans

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 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 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 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 at that person's own expense*" 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, November 30, 2009

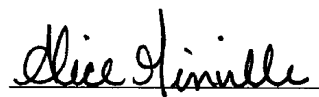

Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

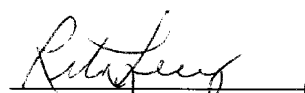
I, the undersigned, Alice Minville, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am a Senior Legal Counsel of Abitibi-Consolidated Inc.;
2. All the facts alleged in the *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

Solemnly declared before me at Montréal,
on the 30th day of November, 2009


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

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

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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

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:	<i>Labrador Linerboard Limited Agreement Act 1979 Repeal Act</i> , 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

Montreal, this 30th day of November, 2009

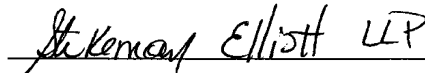

STIKEMAN ELLIOTT LLP
Attorneys for Debtors

EXHIBIT D-1

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October 21, 2009

Via Electronic Mail

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

Dear Ms. Ballard:

Re: Environmental Sampling Upon Former Abitibi-Consolidated Inc./Abitibi-Consolidated Company of Canada ("Abitibi") Expropriated Lands by Conestoga-Rovers & Associates

We are advised by Abitibi's consultants, AMEC, that in CRA's October 7, 2009 sampling work on lands expropriated by the NL Government from Abitibi which comprised an historic Abitibi landfill site (the "Historic Landfill") located south of the Exploits River, between the Grand Falls mill and the currently operating industrial and sludge landfills, CRA excavated and disturbed 5 to 10 yellow bags contained in the Historic Landfill which were subsequently on AMEC's assessment determined to contain asbestos.

The facts relating to this incident as reported by AMEC to Abitibi are as follows:

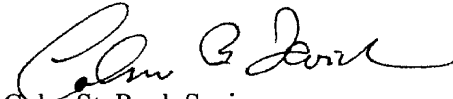
1. CRA's work at the Historic Landfill was not covered by the scope of work proposed for the Grand Falls Site under the Access Agreement.
2. CRA notified Abitibi of this intended sampling work only as a courtesy on October 6, 2009, apparently taking the position that Abitibi's consent to and approval of the intended scope of work at the Historic Landfill were unnecessary.
3. Upon discovery that the yellow bags likely contained asbestos, AMEC advised CRA that it should review the appropriate regulations pertaining to asbestos handling and should notify appropriate authorities, and the following activities ensued on the morning of October 7th:
 - (a) AMEC's technician on site donned a half-mask respirator with P-100 filter upon discovery of the asbestos material;

- (b) CRA departed and returned to the site with half-mask respirators with P-100 filters for CRA's technician and contractor; however, these respirators were not fit tested;
 - (c) CRA advised AMEC that it had been advised to line the test pit with plastic, replace the excavated material and loose asbestos waste and recover it with plastic;
 - (d) AMEC advised CRA that the asbestos waste should be reburied in accordance with the original conditions of burial;
 - (e) AMEC again advised CRA of regulatory obligations to ensure that the contractors handling asbestos were appropriately trained and that respirators should be fit-tested prior to use to ensure that they were functioning properly;
 - (f) CRA advised that it was attempting to remove the immediate health and safety risk and would take further action to restore the area if required;
 - (g) CRA and its contractor completed backfilling the test pit;
 - (h) AMEC subsequently notified CRA that white fibrous material was still visible on the ground surface area around the test pit location, and that this material was left exposed at ground level; and
 - (i) AMEC departed the Historic Landfill site at approximately 11:20am to decontaminate its equipment and clothing; at that point CRA and its contractor were attempting to determine how to decontaminate the area.
4. AMEC remains of the understanding that there was no contact by CRA with the Newfoundland and Labrador Department of Environment and Conservation to determine how to properly rebury the uncovered asbestos waste in the Historic Landfill.

This correspondence is transmitted to document the circumstances surrounding this incident, which occurred during work treated by CRA to be outside the scope of the Access Agreement.

Yours very truly,

Stewart McKelvey



Colin St. Roch Seviour

CSS/sh

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:

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Debtors

- and -
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Monitor

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

Petitioner

BS0350 n/dos.: 041053-1170

EXHIBIT D-1

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EXHIBIT D-2

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Important Information

(Includes disclaimer and copyright information and details about the availability of printed and electronic versions of the Statutes.)

Statutes of Newfoundland and Labrador 2008

CHAPTER 42

AN ACT TO REPEAL THE LABRADOR LINERBOARD LIMITED AGREEMENT ACT, 1979

(Assented to December 18, 2008)

Analysis

1. Short title
2. SNL1979 c11 Rep.

*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session
convened, as follows:*

Short title

1. This Act may be cited as *The Labrador Linerboard Limited Agreement Act, 1979 Repeal Act*.

SNL1979 c11 Rep.

2. *The Labrador Linerboard Limited Agreement Act, 1979* is repealed.

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Commercial Division

Creditors Arrangement Act)

CANADA

PROVINCE OF QUEBEC

DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

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Debtors

- and -
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Monitor

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

Petitioner

BS0350

n/dos.: 041053-1170

EXHIBIT D-2

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Colm St. Roch Seviour
Direct Dial: 709.570.8847
cseviour@smss.com

November 26, 2009

DELIVERED

The Honourable Charlene Johnson
Minister of Environment and Conservation
Government of Newfoundland and Labrador
4th Floor, West Block
P. O. Box 8700
St. John's NL A1B 4J6

Dear Minister Johnson:

**Re: Buchans Mine Action Plan Towards Environmental Compliance and Closure, 2007
(the "Action Plan")
Surface Water and Effluent Discharges Sampling Program at Buchans,
Newfoundland and Labrador**

As you are aware, we represent Abitibi-Consolidated Inc. ("ACI"). ACI is the successor to Abitibi-Price Inc., which was a co-tenant of the Buchans Co-Tenancy together with Asarco Incorporated ("Asarco"). Asarco was the operator of the former mine at Buchans, Newfoundland and Labrador.

Pursuant to the referenced Action Plan, ACI has, since Asarco's Chapter 11 judicial restructuring in 2005, arranged for the monitoring of surface water and effluent, including the outfalls of tailings pond no. 1 and tailings pond no. 2 at the Buchans Co-Tenancy former Buchans mine site, Buchans, Newfoundland and Labrador. Despite its expropriation by the Government of Newfoundland and Labrador and its own judicial restructuring under Chapter 11 and the *Companies' Creditors Arrangement Act* (the "CCAA"), ACI has continued to monitor surface water and effluent discharges at Buchans during the past year. The most recent sampling of the tailings ponds occurred during the week of November 9, 2009.

As you are aware, ACI has no further interest in any lands or waters in the Buchans area whether due to the expropriation of such interests pursuant to the *Abitibi-Consolidated Rights and Assets Act* or pursuant to prior transfers/surrenders of interest. As such, ACI's responsibilities in the area, to the extent any have existed (which is not admitted), arise from its prior interests. You are further aware that ACI is in proceedings pursuant to the CCAA, pursuant to which a Claims Procedure Order dated August 26, 2009 has been issued by the Quebec Superior Court which obliged all persons having a non-exempt Claim (as defined in the Claims Procedure Order) to file such Claim on or before November 15, 2009 failing which all Claims are barred. In light of (a) the deliberate failure of the Province of Newfoundland and Labrador to file a Claim by such deadline (or at all), and (b) the fact that ACI has no continuing interest in any of the subject lands

giving rise to any fresh basis (after the Claims Bar Date) to designate ACI as a "person responsible" pursuant to the *Environmental Protection Act*, ACI takes the position that it has no responsibility in respect of any further matters in relation to any and all areas within which the former Buchans mine operations extended and that, in accordance with the Claims Procedure Order, all Claims in any way arising from or related to its prior activities or holdings are forever barred. Without prejudice to such position, and under reserve of all other rights or protections which may be available pursuant to the CCAA proceedings, the following notice is being sent to notify you of additional (and non-exhaustive) reasons why ACI takes the position that it has no further responsibility in respect of the Action Plan.

ACI hereby advises and gives notice that it regards its obligations under the Action Plan, and under the underlying November 25, 1991 Environmental Compliance Schedule Buchans Co-Tenancy made between the Buchans Co-Tenancy and Environment Canada and the Newfoundland Department of Environment and Lands (the "Compliance Agreement") to have become frustrated in law in relation to all sampling locations committed to in the referenced Action Plan. In particular (but without limitation) ACI believes that all obligations respecting the surface water and effluent monitoring program, and relating to the maintenance of the pump house and the Oriental Wetlands Treatment System, identified in the Action Plan (hereinafter referred to as the "Frustrated Programs"), and the relative obligations in the Compliance Agreement, have now become incapable of being performed because the circumstances in which such performance was committed to were radically different from those which presently exist. ACI notes that sampling obligations at sampling points nos. 7, 8, 10 and 11 identified in the Action Plan had been previously discontinued with the authorization of the Newfoundland and Labrador Department of Environment and Conservation and Environment Canada.

In particular, ACI believes that the commitment to take samples for the purpose of the Frustrated Programs under the Action Plan and the Compliance Agreement has become frustrated in law for the following reasons:

1. In recent years, and certainly since the inception of the Action Plan, ACI has had no control over the NL Government-licensed activities of the barite mining and processing facilities being operated at Buchans by Atlantic Barite Ltd. ("ABL"). ABL's barite mining activities in tailings pond no. 1 have degraded the quality (by increasing metals concentrations) of the effluent discharged at the tailings pond no. 1 discharge point (a compliance point under the Action Plan) in the following ways:
 - (a) ABL's dredging disturbs the sediments/tailings in tailings pond no. 1 and contributes to their resuspension, which in turn may lead to an increase in total suspended solids ("TSS") and metals concentrations in the tailings pond no. 1 effluent;
 - (b) the discharge of the dredge overflow near the shore of tailings pond no. 1 (where sediments have accumulated above the water line as a result of ABL activities) results in suspended solids discharge and contributes to sediment resuspension, which in turn may lead to an increase in TSS and metal concentrations in the tailings pond no. 1 effluent;

- (c) the discharge from 6 seeps and 2 overflow structures from the ABL tailings pond are being collected into a ditch recently excavated at the toe of the ABL dam, and some of this discharge is being directed towards the tailings pond no. 1 discharge ditch or Simms Brook, which in turn may lead to an increase in TSS and metals concentrations in Simms Brook and Buchans River;
 - (d) ABL's project to construct another tailings pond abutting the tailings pond no. 1 dam to the west, and the ABL dam to the north, includes a provision to re-configure the tailings pond no. 1 discharge ditch and potentially modify the tailings pond no. 1 discharge weir. Also, assuming that ABL's second tailings pond would be engineered and constructed in a similar way as their first tailings pond, it is logical to assume that seepage and/or overflow from this new tailings pond would eventually flow towards Simms Brook; and
 - (e) the mineral rights to tailings pond no. 2 have been granted to ABL, along with the mineral rights to tailings pond no. 1, and ACI has reason to believe that further expansion of ABL activities into tailings pond 2 (which may happen sooner than originally anticipated by ABL given the potential impacts of lowering the water level in tailings pond no. 1 on their operations) will have similar negative impacts on the tailings pond no. 2 outfall as is currently being observed in tailings pond no. 1.
2. Also in recent years and certainly since the inception of the Action Plan, ACI has had no control over the activities of third parties other than ABL operating in or near tailings pond no. 1, including the 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 contributes to the contaminant load of Mucky Ditch within the Town of Buchans.
3. All relevant surface rights, tailings pond real property rights and tailings pond structures have been expropriated by and become vested in the Government of Newfoundland and Labrador pursuant to the *Abitibi-Consolidated Rights and Assets Act*, with the consequence that ACI has no technical legal entitlement to access the relevant sampling locations and, more importantly, has no ownership rights or ability to assure the safety and integrity of the relevant sampling access structures, including the tailings pond no. 1 dam.
4. Most recently, the actions of the NL Government, as the current owner of the tailings pond dams at Buchans, in installing an outflow culvert proximate to the existing weir in tailings pond no. 1, raise significant dam safety and structural integrity concerns which are wholly outside the contemplation of the Compliance Agreement and the Action Plan. ACI is not prepared to risk the health, safety and security of its employees and contractors by having them access tailings pond no. 1 dam to sample the effluent discharges from tailings pond no. 1 and tailings pond no. 2, and further believes that the NL Government's actions are having a wholly unanticipated negative impact on the quality of effluent at the intended discharge/sampling points, for the following reasons:

- (a) the installation of an overflow culvert near the tailings pond no. 1 weir, which is not in the opinion of ACI designed and installed in accordance with current and accepted engineering practices and standard of care, promotes erosion and increases the risk of sudden dam failure;
- (b) ACI believes that this new outflow culvert is insufficiently designed and not properly installed, thereby promoting erosion at the inlet, the outlet, and the centre of the culvert (at the joint between the corrugated steel pipe and the concrete pipe forming part of the culvert) with the consequence that the integrity of the tailings pond no. 1 dam, which provides access to the relevant tailings pond no. 1 and tailings pond no. 2 sampling locations, is significantly compromised;
- (c) the ongoing pumping of the tailings pond no. 1 supernatant to significantly lower the water level in the pond (i.e. up to 30 inches) and the installation of the equipment required for this activity may cause sediment resuspension, which in turn may lead to increase in TSS and metals concentrations in the water discharged from tailings pond no. 1;
- (d) the accelerated discharge of degraded effluent from tailings pond no. 1 via pumping over the dam directly into the discharge ditch leading to Simms Brooks results in an abnormal significant increase of the metals loading downstream of the pump discharge;
- (e) the significant lowering of the water level in tailings pond no. 1 results in exposing large areas of previously submerged sediments which in turn can lead to:
 - (i) acidification, oxidation and solubilization of metals in the exposed sediments, which in turn may lead to increase in metals concentrations in tailings pond no. 1;
 - (ii) once dry, there is a risk that the newly-exposed sediments will erode by wind action and will be carried as metal impacted dust over a large area, including the Town of Buchans (see item 1(b) above);
 - (iii) given that there is evidence that tailings pond no. 1 and the ABL tailings pond are hydraulically connected, it is likely that the supernatant from the ABL tailings pond (which is more concentrated in metals) will flow into tailings pond no. 1 through the dam, which in turn may lead to an increase in dissolved metals concentrations in the tailings pond no. 1 effluent;
 - (iv) significant lowering of the ABL tailings pond will expose even more tailings than the amount of tailings currently sitting above the water line in that pond, and the phenomena described in items (i) and (ii) above will also occur in the ABL tailings pond; and

- (v) it is not known whether there is a hydraulic connection between tailings pond no. 1 and tailings pond no. 2, but if there is, the phenomena described in items (i) and (ii) above will also occur in tailings pond no. 2.

We attach relevant photographs depicting the concerns identified in items 4(a) and 4(b) above.

5. Finally, the discharge of the 6 seeps and 2 overflow structures from the ABL tailings pond are being collected into a ditch recently excavated at the toe of the ABL tailings pond dam, and some overflow has been directed towards the contour ditch around the tailings spill area, which in turn appears to lead to a potential increase in TSS and metals concentrations in the Mucky Ditch and Buchans River.

We trust that the foregoing will allow you to fully understand ACT's position in these matters.

Yours very truly,

Stewart McKelvey



Colm St. Roch Seviour

CSTRS/sh

cc. Mr. Daniel Lebel
Atlantic Regional Director General
Environment Canada
45 Alderney Drive
Queen Square
Dartmouth, NS B2Y2N6

Mr. Kevin C. Power, P.Eng.
Head, Compliance Promotion and EA Section
Environmental Protection Operations Directorate- Atlantic
Environment Canada
6 Bruce Street
Mount Pearl, NL A1N 4T3

Mr. Dan Michielsen
Manager of Industrial Compliance
Pollution Prevention
Department of Environment and Conservation
Government of Newfoundland and Labrador
P. O. Box 8700
St. John's, NL A1B 4J6

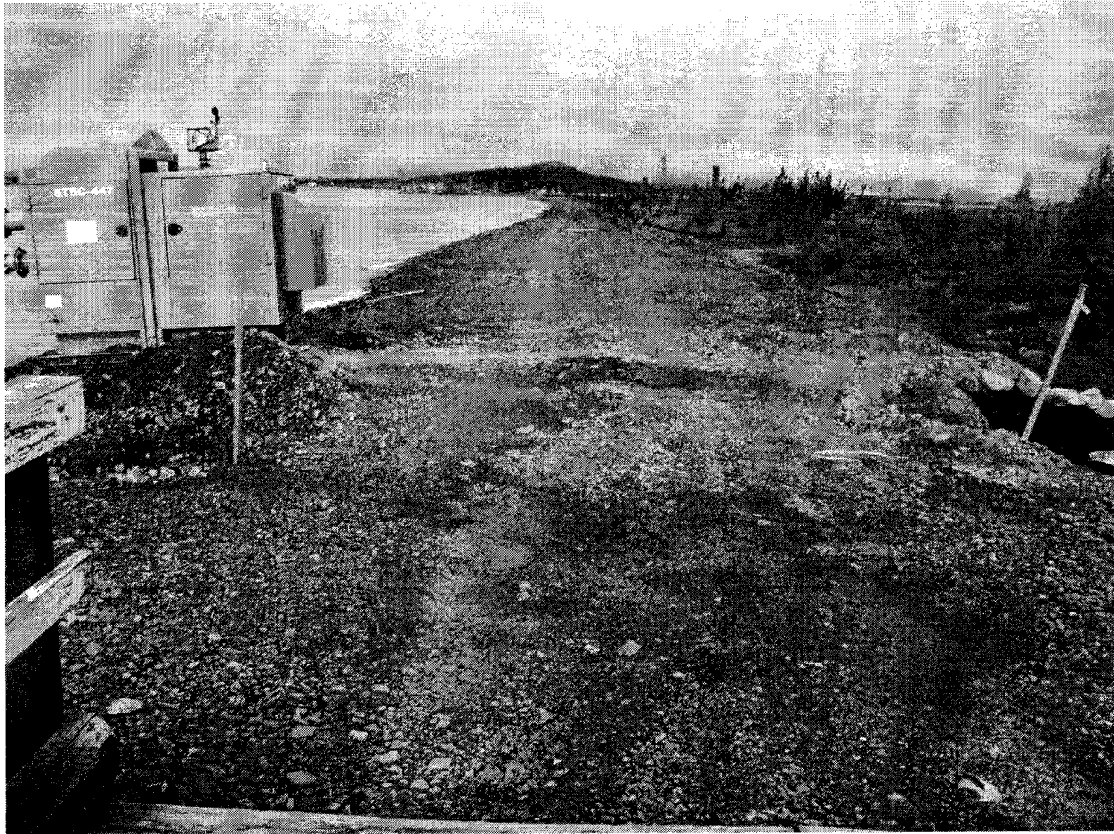


Photo 1: Tailings Pond no.1 dam at overflow culvert recently installed by the Province near Tailings Pond no.1 discharge weir (October 29, 2009). The inlet and outlet of the culvert are marked with a pink flag. Note the short inlet and outfall channels that have been cut into the dam to accommodate for the total length of the culvert being shorter than the width of the dam.



Photo 2: Inlet channel leading to overflow culvert at Tailings Pond no.1. Note the absence of adequate protection from erosion other than backfill with material excavated from the dam itself. Also note the use of an old and corroded 24-inch corrugated steel pipe.



Photo 3: Outfall channel from overflow culvert at Tailings Pond no.1. Note the absence of adequate protection from erosion other than a poorly anchored geotextile under which water was observed flowing. Also note the erosion on the left side, between the geotextile and the wall of the old 24 –inch concrete pipe. Given the rudimentary installation of the culvert and the quality of materials used, it is likely that the joint between the corrugated steel and concrete culvert sections is not watertight, and that water infiltration at this location is mining the dam from the center out.



Photo 4: Outfall from the overflow culvert at Tailings Pond no.1. Note the high turbidity of the effluent caused by the various activities and disturbances in Tailing Pond no.1.

Nº. 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

EXHIBIT D-3

ORIGINAL

Me Guy P. Martel (514) 397-3163
Fax: (514) 397-3493

STIKEMAN ELLIOTT
Stikeman Elliott S.E.N.C.R.L., s.r.l. AVOCATS
40^e Étage
1155, boul. René-Lévesque Ouest
Montréal, Canada H3B 3V2

EXHIBIT D-4



Government of Newfoundland and Labrador
Department of Environment & Conservation

Pollution Prevention Division
(Environment)

May 29, 2009

Mr. Seviour
Stewart, McKelvey
P.O. Box 5038
Suite 1100 Cabot Place
100 New Gower Street
St. John's, NL
A1C 6K3

Dear Mr. Seviour:

Enclosed find a Ministerial Order and Statement of Reasons issued to Abitibi-Consolidated Inc. under the Environmental Protection Act.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Maddocks".

DERRICK MADDOCKS, P. Eng.
Director

/Enclosure

**MINISTERIAL ORDER
UNDER
THE ENVIRONMENTAL PROTECTION ACT
SECTION 99**

To: Abitibi Consolidated Inc

WHEREAS Abitibi-Consolidated Inc (hereinafter "ACI") and its predecessor companies operated a mine at Buchans, Newfoundland and Labrador, between 1928 and 1984.

AND WHEREAS during operations at the mine site at Buchans between 1928 and the 1960's tailings generated from the mining process were typically transported to the Buchans River. However, during power outages or emergency shut downs the tailings, waste material and/or concentrate were dumped into an area which is now known as the Tailings Spill Area. This Tailings Spill Area is a triangular shaped area approximately 500 metres long on its longest side and is located between the town and the former Buchans Mine site. This area contains high concentrations of zinc as well as arsenic, cadmium and lead as identified in studies commissioned by you.

AND WHEREAS pursuant to section 7 of the Environmental Protection Act (the "Act") a person shall not release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that in my opinion causes or may cause an adverse effect, unless authorized under the Act or an approval issued under the Act.

AND WHEREAS ACI has released and is continuing to release a substance into the environment in an amount that in my opinion causes an adverse effect. The release of the substance is not authorized under the Act or an approval issued under the Act.

AND WHEREAS under section 99 of the Act where I believe on reasonable grounds that a person has contravened or will contravene the Act I may issue an Order requiring a person, at his/her own expense to, *inter alia*, stop or shut down an activity or an undertaking immediately or do all things that are necessary to control, manage, eliminate, remedy or prevent an adverse effect and to comply with the Act.

AND WHEREAS I do believe on reasonable grounds that ACI has contravened the Act.

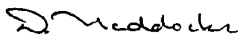
THEREFORE I order you to:

- ▶ **Submit detailed engineering plans for and obtain the necessary approvals to remediate and cap the Tailings Spill Area by June 22, 2009. The use of existing underground mine workings for disposal is not acceptable and the plan must include offsite disposal at an approved facility or insitu capping**

- of the material within the general Tailings Spill Area; and
- Complete the approved tailings spill remedial actions by September 30, 2009.

PURSUANT to Section 107 of the Act you have a right of appeal against this Order by notice in writing to me, within 60 days of receipt of the Order, stating the reasons for the appeal.

Dated at St. John's, in the Province of Newfoundland and Labrador, Canada this 29th day of May A.D., 2009.


MINISTER OF ENVIRONMENT
AND CONSERVATION

STATEMENT OF REASONS FOR ORDER

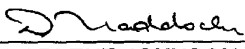
The reasons for the making of the Order which is served upon you concurrent with this statement are as follows:

- 1) You are the person responsible for the Tailings Spill Area at the former Buchans Mine located in Buchans, NL.
- 2) The substance deposited in the Tailings Spill Area has been and continues to be released into the environment at an amount, concentration, and rate of release that in my opinion causes an adverse effect.
- 3) The Tailings Spill Area is a 6.6 hectare triangular shaped area that is approximately 500 metres long on its longest side. It is located on the south west side of Buchans between the town and the former Buchans Mine and is less than 20 metres from residential properties and the local medical centre. Between 1928 and the 1960s, a wooden sluice box was utilized to transport tailings directly to the Buchans River. However, during power outages or emergency shut downs the tailings, waste material, and/or concentrate were dumped into the Tailings Spill Area. The Tailings Spill Area has been a point of significant concern for local residents due to frequent dust liftoff and exposed sediments in the local ditches.
- 4) This area contains 20,000 - 30,000 cubic meters of waste material with high concentrations of "Chemicals of Concern" as identified in studies commissioned by you and the Province. Average concentrations of copper, lead, arsenic and zinc exceed the Canadian soil quality guidelines for an industrial site by factors ranging from 40 to as high as 150 times the acceptable limit. Also identified are potential unacceptable health risks associated with the exposure of this material to humans.
- 5) Over the past two decades you have acknowledged these concerns and have made several efforts to remediate the Tailings Spill Area. These undertakings, however, have had limited success and concerns from the leaching of heavy metals into the environment and potential Human Health Risks associated with impacted dust liftoff and runoff still exist.
- 6) In 2008 you completed a project to remediate the Mucky Ditch running from the Tailings Spill Area and began design work on an engineered cap to contain the source substance of concern and prevent further release of this substance into the environment. You indicated that you have received a draft design from your

consultant but have yet to submit the design for approval or begin work on this site, jeopardizing your ability to complete the necessary undertaking this year.

- 7) Your failure to address the Tailings Spill Area is continuing to cause an adverse affect to the environment.

Dated at St. John's, in the Province of Newfoundland and Labrador, Canada
this 29th day of May AD, 2009



CHARLENE JOHNSON
Minister of Environment and Conservation

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

EXHIBIT D-4

ORIGINAL

Me Guy P. Martel (514) 397-3163
Fax : (514) 397-3493

STIKEMAN ELLIOTT
Stikeman Elliott S.E.N.C.R.L., s.r.l. AVOCATS
40^e Étage
1155, boul. René-Lévesque Ouest
Montréal, Canada H3B 3V2

EXHIBIT D-5



Government of Newfoundland and Labrador
Department of Justice
Civil Division

Herbert F. Edwards
Telephone: (709) 729-1766
E-mail: herbedwards@gov.nl.ca

July 24, 2009

Stewart McKelvey
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3

Attention: Colm St. Roch Seviour

Dear Sir:

**RE: Notice of Appeal
Abitibi-Consolidated Inc.**

Attached please find the decision of the Minister of Environment and Conservation in the above-referenced matter as per s. 107(2) of the Environmental Protection Act.

Yours very truly,

A handwritten signature in black ink, appearing to read "Herb Edwards".

**Herbert F. Edwards
Solicitor**

HFE/lr
Attachment

IN THE MATTER OF a Ministerial Order under the
Environmental Protection Act Section 99 dated
May 29, 2009 issued by the Minister of
Environment and Conservation to Abitibi-
Consolidated Inc;

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

BETWEEN:

ABITIBI-CONSOLIDATED INC

APPELLANT

AND:

MINISTER OF ENVIRONMENT AND CONSERVATION

RESPONDENT

DECISION ON APPEAL

1. On May 29, 2009 an Order was issued against you pursuant to section 99 of the *Environmental Protection Act* (the "Act"). The Order required you to:
 - Submit detailed engineering plans for and obtain the necessary approvals to remediate and cap the Tailings Spill Area by June 22, 2009. The use of existing underground mine workings for disposal is not acceptable and the plan must include offsite disposal at an approved facility or *insitu* capping of the material within the general Tailings Spill Area; and
 - Complete the approved tailings spill remedial actions by September 30, 2009.
2. Accompanying the Order as required by the legislation was a Statement of Reasons for Order.
3. You filed a formal Notice of Appeal with supporting reference documents on June 24, 2009.

4. Under the Act the filing of an appeal does not affect the Order appealed from and that Order remains in force pending the outcome of the appeal.
5. No engineering plans were received by the Department by June 22, 2009 nor to date. Neither has the Department received any applications for the necessary approvals for the work.
6. I have read your Notice and reviewed the supporting documents. I have considered the relevant sections of the Act, reviewed the Departmental file and discussed the matter with Departmental officials.
7. I have decided to render another decision.
8. Given that Contestoga-Rovers & Associates Limited has been retained to undertake an independent environmental assessment of all sites formerly operated by Abitibi-Consolidated Inc., including the former Buchans Mine site, I am staying the Order of May 29, 2009 pending the collection of further information on the outstanding environmental liabilities in the Tailings Spill Area.
9. This decision does not prejudice my authority pursuant to the *Environmental Protection Act* to issue further orders within my jurisdiction, nor does it prejudice your right to bring forward for my consideration the arguments you have submitted in your Notice of Appeal dated June 24, 2009.



Charlene Johnson
Minister of the Department of
Environment and Conservation

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

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

ABITIBIBOWATER INC. *et al*

- and -
ERNST & YOUNG INC.

- and -
HER MAJESTY THE QUEEN IN RIGHT OF THE
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BS0350 n/dos.: 041053-1170

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Nº. 500-11-036133-094

In the matter of Plan of Compromise or Arrangement of:

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Petitioner

BS0350 n/dos.: 041053-1170

LIST OF EXHIBITS AND EXHIBITS D-1 TO D-5

ORIGINAL

Me Guy P. Martel (514) 397-3163
Fax : (514) 397-3493

STIKEMAN ELLIOTT
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