

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

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 on the motion**

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF THE ENVIRONMENT.**

Respondent on the motion

AFFIDAVIT OF JOHN TAYLOR

I, **JOHN TAYLOR**, of the City of Thunder Bay, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Director of the Northern Region Office of the Ministry of the Environment ("MOE") and, as such, have knowledge of the matters hereinafter deposed. Where this affidavit is not based on my personal knowledge, it is based upon information obtained by me from the files of the MOE or other employees of the MOE. I believe such information to be true.

Polluter Pays Principle

2. Attached hereto as **Exhibit "A"** to this my affidavit is a true copy of the Supreme Court of Canada's decision in *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, [2003] 2 S.C.R. 624. The court upheld an order of the Minister of the Environment issued to the former owner of a contaminated property, Imperial Oil. The order was issued under Quebec's *Environmental Quality Act*. The Act authorized the Minister to issue an order to whoever had "emitted, deposited, released or discharged, even before 22 June 1990, all or some of the contaminant" to prepare and implement a plan to remedy the contamination. In upholding this order the court recognized that:
 - this provision of the EQA applies the "polluter pays principle"
 - this principle has become entrenched in environmental law in Canada
 - this principle is found in almost all federal and provincial environmental legislation
3. The court stated, at paragraph 24:

To encourage sustainable development, that principle assigns polluters the responsibility for remedying contamination for which they are responsible and imposes on them the direct and immediate costs of pollution. At the same time, polluters are asked to pay more attention to the need to protect ecosystems in the course of their economic activities.
4. The "polluter pays principle" is reflected in various statutes and regulations of the Province of Ontario. The Ministry of the Environment's Statement of Environmental Values indicates that the Ministry applies the polluter pays principle in that its development of Acts, regulations and policies "... endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle". Attached to this my affidavit as **Exhibit "B"** is a true copy of the Ministry of the Environment's Statement of Environmental Values.

Environmental Protection Act (Ontario)

5. The stated purpose of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 ("EPA") is "... to provide for the protection and conservation of the natural environment."
6. The EPA governs various matters including waste disposal sites. The EPA serves to ensure that waste disposal sites are designed, operated and closed in a manner that protects the natural environment from pollution.
7. Subsection 27(1) of the EPA states:

Certificates of approval

27. (1) No person shall use, operate, establish, alter, enlarge or extend,

- (a) a waste management system; or
- (b) a waste disposal site,

unless a certificate of approval or provisional certificate of approval therefor has been issued by the Director and except in accordance with any conditions set out in such certificate. R.S.O. 1990, c. E.19, s. 27.

8. A Certificate of Approval for a waste disposal site typically contains terms and conditions governing the design, operation and closure of a waste disposal site.
9. In addition, Ontario Regulation 232/98 establishes minimum standards for the design and operation of a landfill.
10. The EPA also provides the Minister of the Environment and provincial officials with broad powers to issue environmental protection orders. Under various sections of the EPA, including sections 17, 18, 43 and 44, an Order may be issued requiring various persons to undertake work in relation to a waste disposal site in order to protect the natural environment.
11. The EPA authorizes a Director to cause work to be done in the event that a person ordered to do the work fails to do so. However, the MOE is not obliged to cause work to be done in such instances nor does it cause work to be done in all cases given the limited availability of funds. The MOE's Environmental Clean Up Fund is a funding mechanism of last resort. It would not typically fund either the capping or monitoring of a landfill. It is typically only used to fund the resolution of serious or urgent environmental problems.
12. Amongst other things, the closure of a waste disposal site serves to reduce the infiltration of precipitation into the waste disposal site and thus minimize the generation of leachate and its migration into the groundwater and surfacewater. Section 132 of the EPA permits the operator of a landfill to be directed by the MOE to provide financial assurance, such as cash or a letter of credit, for the

performance of action specified in the approval or order as well as measures appropriate to prevent adverse effects upon and following the cessation or closing of a waste disposal site. Such financial assurance is required to be returned or released if it is the MOE's opinion that such security is no longer required.

13. It is an offence for a person to contravene:

- a) The EPA and its regulations;
- b) The terms and conditions of a Certificate of Approval; and
- c) An order requiring the environmental remediation of property.

Abitibibowater

- 14. Abitibibowater, and its various related companies, (collectively "Abitibi") have owned and operated various pulp and paper facilities in the Province of Ontario for many years.
- 15. Abitibi is required to operate these waste disposal sites in accordance with the terms and conditions of a Certificate of Approval issued under the EPA.
- 16. Abitibi proposes to transfer three waste disposal sites located in Ontario that, to varying degrees, require remedial action in order to protect the natural environment from pollution.
- 17. The proposed purchaser of these three waste disposal sites, 4513541 Canada Inc., is a subsidiary of Abitibi. It is in Receivership and it appears to be insolvent. If the Receiver is unable to sell these sites, I expect that the Receiver will abandon these sites. If abandoned, it appears that 4513541 Canada Inc. lacks the financial ability to undertake the required work for these sites. Some of this work is required under the current Certificate of Approvals. If the purchaser fails to perform this work, or if other unforeseen environmental work is required, then the Certificate of Approval may be amended to require such work to be compelled or an order may be issued under the EPA or the Ontario Water Resources Act to a responsible person to compel the performance of such work.

Margach Landfill

- 18. The Margach Landfill is an inactive waste disposal site located on about 45 hectares of land owned by Abitibi – Consolidated Company of Canada in the City of Kenora. The Margach Landfill received various wastes from Abitibi's pulp mill in the City of Kenora for many years. Abitibi's pulp mill in Kenora closed in October 2005. After the closure of the mill the waste disposal site received waste from the mill demolition and other sources. The last waste was brought to the waste disposal site in October 2009. The Margach landfill remains to be capped and closed.

19. Attached to this my affidavit as **Exhibit "C"** is a true copy of the Certificate of Approval issued in respect of this waste disposal site on September 29, 1995 along with all amendments up to and including July 29, 2010. The Certificate of Approval is currently issued to Abitibi-Consolidated Company of Canada.
20. The Certificate of Approval issued on September 29, 1995 required financial assurance in the amount of \$830,000 that the waste disposal site be operated in accordance with the Certificate of Approval. It also required that the operator re-assess the amount of financial assurance required every three years. As a result of the amount of financial assurance increased over the years based on calculations submitted by the operator. Attached to this my affidavit as **Exhibit "D"** is a true copy of a letter from Abitibi Consolidated dated November 18, 2005 which indicated the required financial assurance was \$1,760,227. Attached to this my affidavit as **Exhibit "E"** is a true copy of a Letter of Credit from CIBC in the amount of \$1,796,511.00 that was provided by Abitibi-Consolidated Company of Canada as financial assurance along with related correspondence.
21. Following the receipt of groundwater monitoring data from Abitibi-Consolidated Inc. in the vicinity of the Margach Landfill (as required by the terms and conditions of the Certificate of Approval), the MOE discovered that leachate from the Margach Landfill was having an off-site impact. In order to address such impacts, an environmental order was issued that required Abitibi-Consolidated Inc. to develop a plan to address this impact. Attached to this my affidavit as **Exhibit "F"** is a true copy of a Provincial Officer's Order issued pursuant to section 157.1 of the EPA to Abitibi-Consolidated Inc, dated January 19, 2007. To address this impact, Abitibi-Consolidated developed a plan that provided for the closure of the waste disposal site, including document preparation, surface grading, perimeter ditching and construction of an engineered clay cap. Attached to this my affidavit as **Exhibit "G"** is a true copy of a letter from Abitibi-Consolidated to the MOE dated November 17, 2009 which describes this plan and indicates that the completion of the closure process will take two years after all the waste had been deposited into the landfill (ie. Two years from October 21, 2009). The Margach Waste Disposal site remains to be closed.
22. Attached to this my affidavit as **Exhibit "H"** is a true copy of a memorandum, dated April 14, 2010, prepared by Alisdair Brown, P. Eng., the MOE's Regional Hydrogeologist. I am advised by Mr. Brown and verily believe that:
 - a) leachate continues to be generated at this waste disposal site and that the plume of leachate extends off-site beyond the property boundary;
 - b) the development and implementation of a proper closure of the waste disposal site would significantly reduce leachate production at this site

23. Abitibi now takes the position that its potential environmental liability exposure related to the Margach Landfill is \$4 million. Attached hereto as **Exhibit "I"** to this my affidavit is a true copy of the Amended Notice of Motion filed by Abitibi dated August 4, 2010. At paragraph 15(j), Abitibi states that:

With respect to the Kenora Margach Landfill Property, the maximum Environmental Exposure that could be incurred is estimated to be \$4,000,000 for the capping and closure of the landfill as well as post closure groundwater monitoring for the next thirty (30) years. The Kenora Margach Landfill Property is assessed at \$242,000. On July 2, 2010, the Ontario Ministry of the Environment informed the Petitioners that following the inspection of the landfill on May 27, 2010, and the future closure of the site, the Petitioners would have to submit a closure plan and an application to amend the certificate of approval. The Petitioners had until August 2, 2010, to provide a written response indicating their commitment to full closure of the site and a timetable submission of a closure plan and an application to change the status of the site closed. The Petitioners have yet to provide the response requested by the Ministry;

24. Attached to this my affidavit as **Exhibit "N"** is a true copy of an email dated August 24, 2010 from counsel for Abitibi who explained how the \$4 million estimate was calculated in the following manner:

With respect to the maximum estimate set out in the motion materials of \$4 million (for capping, closure and post-closure groundwater monitoring for the next 30 years), Abitibi views this as a conservative estimate. Monitoring and maintenance costs for this site are currently in the range of \$75,000/yr with such costs to decrease to approximately \$36,000/yr following closure. Closure activities at the site have been estimated to be in the range of \$2 million for capping and vegetation with additional costs of approximately \$100,000 for general decommissioning, leachate seep repair and regrading costs. The 30-year timeframe is conservative: 25 years is more consistent with MOE post-closure monitoring requirements.

25. Accordingly, since Abitibi estimates that the capping, closure and post-closure groundwater monitoring costs of the Margach Landfill could amount to \$4 million, this would result in about \$2 million of estimated costs being unfunded.

Mud Lake Landfill

26. The Mud Lake Landfill is an inactive waste disposal site located on about 7 hectares of land owned by Abitibi – Consolidated Company of Canada in the City of Kenora. This waste disposal site received various wastes from Abitibi's pulp mill in the City of Kenora including clarifier sludge, wood, bark, sawdust and dredgings.
27. Attached to this my affidavit as **Exhibit "J"** is a true copy of the Certificate of Approval, as amended September 8, 2004, issued to Abitibi Consolidated Company of Canada
28. I am advised by Ray Boivin, Senior Environmental Officer, Kenora Area Office, and verily believe, that:

- (1) the closure plan for this waste disposal site was received in July 2003 and implementation of the plan, was completed by November 30, 2003;
 - (2) the closure plan required the installation of an impermeable cap, the development and implementation of a long-term monitoring program, and the collection and treatment of leachate produced by the waste disposal site;
 - (3) collected leachate is discharged to a sump and is then pumped to the City of Kenora's sewage treatment plant.
29. Attached to this my affidavit as **Exhibit "K"** is a true copy of a Letter of Credit from CIBC in the amount of \$258,748.00 that was provided by Abitibi Consolidated Company of Canada as financial assurance along with an amendment dated October 1, 2004 from CIBC correcting an error in the Certificate of Approval reference. The purpose of these funds is to ensure that the long-term environmental monitoring and leachate treatment requirements of the Certificate of Approval are performed.
30. Attached hereto as **Exhibit "I"** to this my affidavit is a true copy of the Notice of Motion filed by Abitibi dated July 15, 2010. Abitibi takes the position, at paragraph 15(k) that:

With respect to the Kenora Mud Lake Landfill Property, the Environmental Exposure that could be incurred is estimated to be \$50,000 per year for long-term monitoring, collection and pumping equipment maintenance in connection with leachate discharge, resulting from the accumulation of wood residues that occurred prior to the filing of the CCAA proceedings. Also, the treatment cost at the town treatment plant that is currently set at approximately \$5,000 to \$7,000 per year. The Kenora Mud Lake Landfill Property is assessed at \$229,000.

31. Attached to this my affidavit as **Exhibit "N"** is a true copy of an email dated August 24, 2010 from counsel for Abitibi who explained how many more years of leachate monitoring and treatment would be required as follows:

The Mud Lake Landfill is a closed facility and post-closing monitoring has been carried out for approximately 6 years. The estimated exposure cost set out in the motion materials was \$50,000 per year for long term monitoring, collection and pumping equipment maintenance in connection with leachate discharge as well as between \$5,000 and \$7,000 per year for leachate treatment costs at the municipal wastewater treatment plant. The majority of such costs are incurred directly by Abitibi and this estimate is considered to be conservative. Third party consultant costs for monitoring are approximately \$14,000/yr. A timeframe for future monitoring requirements has not been set but is not expected to extend beyond an additional 20 years.

32. I am advised by Alisdair Brown, P. Eng., the MOE's Regional Hydrogeologist, and verily believe that monitoring of this waste disposal site will likely be required for another twenty years, and possibly longer depending on whether any leachate is discovered to be migrating from the property. If leachate migration from the waste disposal site is found, then remedial action may be necessary.

33. Using Abitibi's figures, the future cost of long-term monitoring could amount to \$1 million with an additional \$100,000 to \$140,000 for leachate treatment costs. This would result in almost \$1 million of estimated water monitoring and treatment costs being unfunded.

Dryden Mercury Landfill

34. The Dryden Mercury Landfill is an inactive waste disposal site located on about 7 hectares of land owned by Bowater Canadian Forest Products Inc. ("Bowater") in the City of Dryden. This site is closed and no longer receives waste. From 1971 to 1981 several buried concrete cells containing mercury waste were disposed at this waste disposal site.
35. Attached to this my affidavit as **Exhibit "L"** is a true copy of the Certificate of Approval, issued January 28, 1990, issued to Great Lakes Forest Products Limited for the Dryden Mercury Landfill. This approval requires the surveillance of potential leachate migration to ensure the quality of the groundwater.
36. Samples from several monitoring wells are taken annually to assess the subsurface soil and groundwater conditions in order to determine whether mercury or other contaminants are migrating off-site.
37. The cost to complete the annual water quality monitoring/report program in order to comply with Certificate of Approval was estimated at \$9,350 plus GST in May, 2010 by the consultant that had previously submitted such reports to MOE on behalf of Bowater.
38. Attached hereto as **Exhibit "I"** to this my affidavit is a true copy of the Notice of Motion filed by Abitibi dated July 15, 2010. Abitibi takes the position, at paragraph 15(h) that:

With respect to the Dryden Mercury Property, the Environmental Exposure that could be incurred is estimated to be \$250,000 per year for ongoing monitoring and maintenance. The site includes a former mercury landfill in which the mercury has been stabilized in a concrete mixture. The landfill is encapsulated and closed. There is a risk of impact to groundwater of the encapsulation was to somehow fail. The Dryden Mercury Property is assessed at \$31,500.

39. Attached to this my affidavit as **Exhibit "N"** is a true copy of an email dated August 24, 2010 from counsel for Abitibi who explained that the estimate of environmental exposure was \$250,000 in total rather than \$250,000 per year. The email stated::

The encapsulation and closure of Dryden landfill undertaken in 1980 (which involved mixing mercury into concrete to encapsulate within a dedicated lined landfill) has been effective in containing substances including mercury and chloride, as demonstrated by ongoing monitoring activities. The Ministry has conducted inspections of the landfill,

received monitoring results and provided comments regarding such monitoring (which have been addressed by Bowater). Costs for monitoring and maintenance has been estimated by Bowater at \$250,000 for a period of 20 years which includes annual monitoring costs of approx. \$10,000 as well as \$50,000 with respect to activities such as ditch cleaning, vegetative cover repair and monitoring well replacement as needed. Bowater is of the view that this is a reasonable estimate of time and costs related to future management of the Dryden landfill.

There is currently no anticipated risk of failure of the encapsulation and such potential risk is viewed as highly unlikely. In the unlikely event that mercury or chloride be released from the landfill at levels that would require further action, it is anticipated that mitigation measures could be implemented (such as increasing vegetation to the site) without having to repair the encapsulation. Such mitigation measures are expected to be achieved at reasonable costs (eg. Within the estimated maintenance costs or <\$100,000 additional funds).

40. Attached to this my affidavit as **Exhibit "M"** is a true copy of a letter written on behalf of AbitibiBowater Inc. dated February 19, 2009 which concurs with various recommendations from the MOE including a recommendation to install a new monitoring well to assess water quality at the site. I am advised by Ray Boivin, Senior Environmental Officer, Kenora Area Office, and verily believe, that this work has not been performed.
41. I am advised by Ray Boivin, Senior Environmental Officer, Kenora Area Office, and verily believe, that the Ministry of the Environment does not hold Financial Assurance from Bowater to ensure the performance of the post-closure monitoring activities. As a result the ongoing groundwater monitoring costs and related repairs are unfunded.

Abitibi's Estimate is Speculative

42. Abitibi has attempted to quantify its future potential environmental liability with respect to the three waste disposal sites in Ontario. In my view its estimate of \$5.333 million is uncertain and speculative. The surfacewater and groundwater monitoring that will be undertaken for the next 20 years or more at these sites may uncover environmental impacts emanating from Abitibi's properties that require environmental remediation. The nature and severity of those impacts, as well as the appropriate remedial measures, and their costs, is unknown.

Order Sought By Abitibi

43. It appears that this motion is designed to allow Abitibi and its subsidiary purchaser to exempt themselves from all environmental responsibilities imposed by statute and thereby avoid the application of the polluter pays principle.
44. Abitibi has asked this Honourable Court to "crystallize" all environmental

obligations it has in respect of the transferred waste disposal site in order that:

- a) they may be treated as "claims" under the CCAA and compromised;
 - b) Abitibi may be free from such obligations following its release from the CCAA process.
45. Abitibi has also asked that the court make an order that would pass title to the purchaser "... free and clear of and from any and all claim, liabilities, obligations ...". It appears that the effect of this order would be that the purchaser of these waste disposal sites would:
- a) Not be bound by the existing Certificate of Approval (as would be the case by operation of section 19 of the EPA which provides that a successor or assign is bound by a Certificate of Approval)
 - b) Be exempt from obligations under any statute in respect of this landfill
 - c) Be exempt from environmental orders in respect of this landfill
 - d) Be exempt from prosecution if it contravenes the EPA

No Evidence of Failure of CCAA Re-Organization if Motion Denied

46. Paragraph 32(e) of the Amended Notice of Motion asserts that "... the sale of the Non-Core Properties is an important component of Petitioner's attempt to successfully restructure their business as it will allow environmental liabilities with respect to Non-Core Properties to be dealt with in the restructuring plan filed by Petitioners".
47. While it may be "important" to Abitibi, there is no evidence in the Amended Notice of Motion dated August 4, 2010 that there is a reasonable prospect, or any prospect, that the CCAA reorganization of Abitibi would fail if this Motion was denied.

Implications for MOE

48. I am unaware of any other company that has ever attempted to use the CCAA to obtain court approval of a scheme of the type proposed by Abitibi to extinguish its environmental obligations by transferring properties to its subsidiary.
49. If granted, this order would:
- a) create a precedent that undermines the "polluter pays" principle.

- b) create two classes of environmental regulation: one for companies that have emerged from CCAA and another class for everyone else.

General Chemical

50. I am advised by Michael Moroney, Executive Project Lead, Southwestern Region, Ministry of the Environment and verily believe that it was MOE's intention to remediate the Soda Ash Settling Basin at the former General Chemical Canada Ltd. Plant in Amherstburg, Ontario in the event that the bankrupt, General Chemical Canada Ltd, or any other responsible party, would not undertake the remediation. In approving a settlement by the MOE and the bankrupt's parent company, and officers and directors following the issuance of an environmental order under the EPA requiring the remediation of the Soda Ash Settling Basin, the Environmental Review Tribunal noted that the MOE would "oversee the compliance of the Order using the \$20.4 million available through the financial assurance that is a condition of the C of A for the SASB". Attached as **Exhibit "O"** to this my affidavit is a true copy of the Environmental Review Tribunal's decision dated February 26, 2009 without its appendices.

SWORN before me at the City of Toronto
this 30th day of August 2010



A Commissioner, etc.

MARIO FALETA



JOHN TAYLOR

This is Exhibit A referred to in the
affidavit of JOHN TAYLOR Page 1
sworn before me, this 30th
day of AUGUST 20 10

[Signature]
COMMISSIONER, ETC.

Indexed as:

**Imperial Oil Ltd. v. Quebec (Minister of the
Environment)**

Imperial Oil Ltd., appellant;

v.

**Attorney General of Quebec for and on behalf of the
Minister of the Environment, André Boisclair (formerly
Paul Bégin), respondent, and**

**Administrative Tribunal of Québec, City of Lévis,
Ginette Tanguay, Marc Turgeon, Lucie Munger, Nicolas
Pelletier, Christine Duhaime, Succession of Claude
Maheux, Christine Bédard, Nancy Kidd, André Martin,
Jacques Desmeules, Claude Nadeau, Brigitte Michaud,
Lucien Bélanger, Carole Roseberry, Reynald Landry,
Bernard Côté, Groupe B. Côté, Caisse populaire
Desjardins of Saint-David, Les Entreprises Michel Verret
inc., André Blais, Sylvie Bourget, Céline Couture,
Jacques Marquis, Normand Rodrigue, Chantale Jean,
Jean-Marc Bergeron, Jocelyne Glasson, Lini Fortin,
Martine Ringuet, Marielle Vallières, Gilbert Caron, Rita
Nolin, Renée-Claude Gagné, Danny Gracez and Corporation
Adélaïde Capitale inc., mis en cause, and
Attorney General of Ontario and Friends of the Earth,
interveners.**

[2003] 2 S.C.R. 624

[2003] S.C.J. No. 59

2003 SCC 58

File No.: 28835.

Supreme Court of Canada

Heard: February 14, 2003;

Judgment: October 30, 2003.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major,
Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

(40 paras.)

[page625]

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Catchwords:

Administrative law -- Discretion -- Procedural fairness -- Duty of impartiality -- Conflict of interest -- Minister of the Environment issuing characterization order against former owner of land polluted by hydrocarbons when he was himself sued for damages by present owners of land -- Whether Minister fulfilled his duty of impartiality in issuing characterization order -- Environment Quality Act, R.S.Q., c. Q-2, s. 31.42.

Environmental law -- Decontamination and restoration -- Characterization of land -- Order of Minister -- Nature of functions and powers assigned to Minister in connection with administration of Environment Quality Act -- Content of rules of procedural fairness relevant to performance of Minister's functions -- Environment Quality Act, R.S.Q., c. Q-2, s. 31.42.

Summary:

When contamination caused problems at a site that had been operated by Imperial Oil, Quebec's Minister of the Environment ordered Imperial, pursuant to s. 31.42 of the Environment Quality Act ("EQA"), to prepare at its own expense a site characterization study which would also include appropriate decontamination measures and submit it to the Ministère. Imperial declined to do the study and asked the Administrative Tribunal of Québec to quash the Minister's order. It argued, inter alia, that there had been a violation of the rules of procedural fairness that applied to the Minister's decision since the Minister was in a conflict of interest because he had been involved in the earlier decontamination work and was now being sued concerning the contamination of the site by the present owners of the land. The Tribunal dismissed the appeal, but the Superior Court allowed the application for judicial review. It concluded that the Minister's order should be set aside because the Tribunal had adopted an unreasonable interpretation of s. 31.42 EQA, but also because the Minister was in a conflict of interest. The Minister therefore did not have the appearance of impartiality required by the rules of procedural fairness. The Quebec Court of Appeal set aside this decision and affirmed the Minister's order.

Held: *The appeal should be dismissed.*

The Minister had the authority to issue the kind of order at stake in the present case under the EQA. Section 31.42, which sets out what is called the polluter-pay principle, allows for the use of a broad discretion by [page626] the Minister. Under that provision, the Minister may impose an obligation on the parties responsible for the contamination of the environment to conduct the studies required in order to ascertain the nature of the problem identified, to submit a plan for the corrective work and, where applicable, to have that work performed at their own expense. In the application of s. 31.42, the Minister is performing a mainly political role which involves his authority, and his duty, to choose the best course of action, from the standpoint of the public interest, in order to achieve the objectives of the environmental protection legislation. He is not performing an adjudicative function. On the contrary, he is performing his functions of management and application of environmental protection legislation.

Imperial's challenge rests on an erroneous understanding of the Minister's functions and of the nature of the relevant

rules of procedural fairness. Having regard to the context, which includes the Minister's functions viewed in their entirety, as well as to the framework within which his power to issue orders is exercised, the concept of impartiality governing the work of the courts does not apply to his decision. The contextual nature of the content of the duty of impartiality, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions. Here, the Minister certainly had to comply with the procedural fairness obligations set out in the law, such as the requirements that notice be given to interested persons and that reasons for the decision be given. Once those requirements had been met, the principles of procedural fairness that applied to the situation, and that were in fact codified by the Act respecting Administrative Justice, required only that he comply with the procedural obligations set out in the law and that he carefully and attentively consider the representations made by the person subject to the law he administered. Moreover, the interests in issue certainly did not amount to a personal interest within the meaning applied to that expression in the case law. The only interests the Minister was representing were the public interest in protecting the environment and the interest of the State, which is responsible for preserving the environment. In the circumstances of this case, it was difficult to separate those interests. In exercising his discretion, the Minister could properly consider a solution that would save some public money. Accordingly, he applied one of the organizing principles of the EQA, the polluter-pay principle. There was no conflict of interest such as would warrant judicial intervention, let alone any abuse or misuse of power. The Minister acted within the framework provided by the applicable law and in accordance with that law. There was no need to rely on the theory of overlapping duties or the theory of necessity [page 627] since there was no ground on which proceedings to review the decision of the Administrative Tribunal of Québec dismissing the appeal from the Minister's decision were available.

Cases Cited

Applied: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; referred to: *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, 2001 SCC 40; *Valente v. The Queen*, [1985] 2 S.C.R. 673; *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369; *Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 S.C.R. 884, 2003 SCC 36; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, 2001 SCC 52.

Statutes and Regulations Cited

Act respecting Administrative Justice, R.S.Q., c. J-3, ss. 2, 5, 15, 137.

Arctic Waters Pollution Prevention Act, R.S.C. 1985, c. A-12, ss. 6, 7.

Canadian Charter of Rights and Freedoms, s. 11(d).

Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33.

Charter of Human Rights and Freedoms, R.S.Q., c. C-12, s. 23.

Contaminated Sites Remediation Act, S.M. 1996, c. 40, ss. 1(1)(c)(i), 9(1), 15(1), 17(1), 21(a).

Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25, s. 56(1).

Environment Act, S.N.S. 1994-95, c. 1, ss. 2(c), 69, 71, 78(2), 88, 89, 90.

Environment Management Act, R.S.B.C. 1996, c. 118, s. 6(3).

Environment Quality Act, R.S.Q., c. Q-2, ss. 2(c), 19.1, 19.2, 19.3, 22, 25, 27, 31.11, 31.42 [ad. 1990, c. 26, s. 4; am. 1997, c. 43, s. 518], 31.43, 31.44 [ad. 1990, c. 26, s. 4; am. 1997, c. 43, s. 520], 96 [am. 1999, c. 75, s. 32], 106 to 115, 113, 115.1 [am. 1984, c. 29, s. 21].

Environmental Management and Protection Act, 2002, S.S. 2002, c. E-10.21, ss. 7, 9, 12, 14, 15, 46.

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Environmental Protection Act, R.S.N.W.T. 1988, c. E-7, ss. 4(2), 5.1, 6, 7, 16.

Environmental Protection Act, R.S.O. 1990, c. E.19, ss. 7, 8, 43, 93, 97, 99, 150, 190(1).

Environmental Protection Act, R.S.P.E.I. 1988, c. E-9, ss. 7, 7.1, 21.

Environmental Protection Act, S.N.L. 2002, c. E-14.2, ss. 8(1), 9, 28, 29, Part XIII.

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12, ss. 2(i), 112, 113(1), 114(1), 116.

Fisheries Act, R.S.C. 1985, c. F-14, s. 42.

Ontario Water Resources Act, R.S.O. 1990, c. O.40, ss. 16.1 [ad. 1998, c. 35, s. 49], 32, 84, 91.

Pesticides Act, R.S.O. 1990, c. P.11, ss. 29, 30.

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History and Disposition:

APPEAL from a judgment of the Quebec Court of Appeal, [2001] R.J.Q. 1732, [2001] Q.J. No. 3541 (QL), reversing a decision of the Superior Court, J.E. 2000-442, that had set aside a decision of the Administrative Tribunal of Québec, [1999] T.A.Q. 1256. Appeal dismissed.

Counsel:

Pierre Legault and Olivier Therrien, for the appellant.

Claude Bouchard, Dominique Rousseau and Anne-Marie Brunet, for the respondent.

Jacques Lemieux, for the mis en cause the Administrative Tribunal of Québec.

Michel Laliberté, for the mis en cause the City of Lévis.

Jack D. Coop, for the intervener the Attorney General of Ontario.

Written submissions only by Jerry V. DeMarco, Robert V. Wright and Lynda M. Collins, for the intervener Friends of the Earth.

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English version of the judgment of the Court delivered by

LeBELL J.:--

I. Introduction

1 This environmental law case arises out of the application of the polluter-pay statutory principle that has now been incorporated into the environmental legislation of Quebec. When contamination caused problems at a site that had been operated by the appellant, Imperial Oil Limited ("Imperial"), Quebec's Minister of the Environment (the "Minister") ordered Imperial to prepare at its own expense a site characterization study which would also include appropriate decontamination measures and submit it to the Ministère. Imperial challenged that order before the Administrative Tribunal of Québec ("ATQ"), without success. The Superior Court allowed Imperial's application for judicial review because the Tribunal had committed what were, in the Court's opinion, unreasonable errors in interpreting the relevant legislation. In addition, the Court held that a situation of conflict of interest in which the Minister found himself at the time the order was issued would have invalidated the order in any event. Because the Minister had been involved in supervising earlier decontamination work at the site and a number of purchasers of parts of the site had brought action against the Minister in civil liability, he did not have the appearance of impartiality required by the rules of procedural fairness applicable to his decision. The Quebec Court of Appeal set that judgment aside. In the opinion of that Court, the nature of the duties imposed on the Minister created a state of necessity which justified a situation that would otherwise have breached the principle of impartial administrative decision-making. The appeal decision also held that the ATQ had not unreasonably interpreted the *Environment Quality Act*, R.S.Q., c. Q-2 ("*EQA*").

2 This appeal again raised a number of the legal issues that had previously been considered by the Quebec Court of Appeal and the Superior Court in this case. For reasons differing in part from those of the Court of Appeal, I would dismiss this appeal. [page630] The Minister had the authority to issue the kind of order at stake in the present case under the *EQA*. Accordingly, by reason of the nature of the duties assigned to the Minister by the *EQA*, he did not violate any of the rules of procedural fairness that applied to the execution of his power to issue orders. The concept of impartiality was raised, interpreted and applied incorrectly in this case.

II. Origin of the Case

3 As in many environmental law cases, the roots of the problem in issue go back a very long time, in this case to, or almost to, the beginning of the 20th century. In about 1920, Imperial built a petroleum products depot on land it had acquired on the south shore of the St. Lawrence River in Lévis, opposite Québec. Imperial continued to operate the depot until 1973. In 1979, it sold the buildings. The purchaser demolished the petroleum processing facilities, and in 1987 sold the site on to a real estate developer, Les Habitations de la Marina Inc. ("Marina"), which planned to build a residential complex on it.

4 The environmental problems became apparent at that time. Test borings of the soil showed the presence of hydrocarbons. The discovery of these contaminants might have become a bar to the issuing of building permits. Marina

then commissioned soil characterization studies. The experts it consulted confirmed the presence of contaminants and suggested two decontamination methods to solve the problem. They also recommended that the Ministère de l'Environnement et de la Faune of Quebec be consulted in order to obtain its advice about the measures being considered. The Ministère required further studies, which Marina obtained and submitted. The Ministère then approved the decontamination methods to be used so that housing could be built on the former oil depot site. No contact was made with Imperial during that period. The Ministère's requirements included that the decontamination work be supervised by an independent consultant. The developer did not hire the consultant, but had the decontamination work executed in accordance with the recommendations of the Ministère. When it was over, the Ministère [page631] issued a certificate of authorization. Streets were laid out, and a number of houses were built.

5 In 1994, the pollution problem on the site resurfaced. The owners of some of the properties again noticed signs that hydrocarbons were present in the soil, and became concerned. New characterization studies were done and confirmed their fears. Because of the oil and the concentrations of mineral grease detected, the land could not be used for residential purposes. Owners of contaminated lots filed three actions in court against the vendor who had sold them the property and against the City of Lévis, which had issued the building permits. The Ministère was also joined as a party. It was alleged, *inter alia*, that it had been negligent in supervising and approving the decontamination work. Notices of intended proceedings were served in other cases. The matter became increasingly politicized. The City of Lévis began to look for a solution that would satisfy the owners involved and the public.

6 To that end, the City of Lévis initiated discussions with the Ministère, which considered a variety of solutions. On March 12, 1998, after further studies and lengthy consultations, the Minister decided to issue an order under s. 31.42 *EQA*. This order required Imperial, as the former owner and operator of the site, to have a soil characterization study done by an independent expert, at its own expense, and to submit the report no later than June 30, 1998. The study had to include a detailed examination of the condition of the soil, an assessment of the level of soil contamination and recommendations as to what action should be taken upon receipt of the report. The order, called a characterization order, did not direct that the work be done at that stage in the proceedings initiated by the Ministère.

7 Imperial declined to do the characterization study. It exercised the right of appeal provided for by s. 96 *EQA*. It asked the Tribunal to quash the Minister's order. After the dismissal of its appeal by the Tribunal, it initiated the judicial review proceedings which are now the subject of the appeal to this Court. In order to precisely identify the legal issue [page632] on which the outcome of this appeal turns, we must carefully examine the judicial history of this case and the reasons stated first by the Administrative Tribunal and then by the Superior Court and the Court of Appeal.

III. Judicial History

A. *Administrative Tribunal of Québec*, [1999] T.A.Q. 1256

8 Imperial's argument before the Administrative Tribunal was, first, that there had been a violation of the rules of procedural fairness that applied to the Minister's decision. The Minister was in a conflict of interest, because he had been involved in the decontamination work done in 1988 and 1989. Accordingly, it was impossible for him to act impartially, in accordance with the principles of natural justice. Its second argument was that the facts of the case did not support a characterization order, and that in any event the order could not have been made against Imperial, which argued that it had used its site in accordance with then acceptable standards for industrial land, during the time it operated its depot.

9 The decision of the Administrative Tribunal rejected all of the appellant's arguments. The Tribunal found, first, that the complaints regarding the violation of the rules of procedural equity were without merit. In its opinion, the notices required had been given before the order was issued. Imperial had had an opportunity to present observations to the Minister. Moreover, in the Tribunal's opinion, the legislation created overlapping functions that were an exception to the rule of impartiality. The overlap reflects the exigencies of the enforcement of environmental legislation. The order,

which was limited to the characterization study, was also not an unreasonable exercise of the Minister's powers. The argument concerning the requirements that had to be met before issuing the order was also rejected after a review of the evidence. On that point, the Tribunal decided that such orders may be made against a party who is no longer the owner of a site, if it may have been responsible for pollution discovered on the site, after the transfer or abandonment, in accordance with ss. 31.42 and 31.43 *EQA*. In the [page633] Tribunal's opinion, the evidence established that the hydrocarbons found in the soil, which had in fact moved beyond the boundaries of the site, came from the operations carried on by Imperial. The Tribunal affirmed the Minister's order for those reasons.

B. *Quebec Superior Court*, J.E. 2000-442

10 Imperial then moved the dispute to the Superior Court. It filed an application for judicial review and declaratory judgment. Its application asked that the decision of the Administrative Tribunal affirming the Minister's order be reviewed and set aside. In its application, the appellant restated its arguments concerning the failure to meet the requirements governing the issuing of that kind of order, in the context of this case. It also alleged that the Tribunal's decision was unreasonable. Its main argument, however, seems to have related to the legal status of the Minister at the time the order was issued. On that point, it argued that the Tribunal should not have affirmed a decision that the Minister had had no jurisdiction to make, because he was in a conflict of interest and thus did not have the impartiality required to make the decision. The conflict of interest allegedly arose from the proceedings that had previously been brought against the Minister concerning the contamination of the land, and the proceedings he had been threatened with, as well as from his involvement in the decontamination work carried on between 1987 and 1989. Imperial also noted -- correctly -- that during that period it had received neither a warning that the pollution problem had been discovered or that work had been undertaken to remedy it nor a request that it be involved in that work. It pointed out that the work had complicated the situation and had undoubtedly considerably increased the costs of the characterization studies and of the decontamination and site restoration work that might have to be executed.

11 Pelletier J. allowed the application for judicial review and set aside the Tribunal's decision and the Minister's order. His judgment held, first, that the Tribunal had adopted an unreasonable interpretation of s. 31.42 *EQA* when it concluded that the characterization order imposed only reasonable [page634] costs on Imperial. The Superior Court seems to have thought, in this case, that the characterization order necessarily involved an order to perform decontamination or restoration, and that the two steps could not be separated. Pelletier J. therefore found that the Tribunal had greatly underestimated the extent of the obligations imposed by the order, and that the seriousness of that error vitiated the Tribunal's entire analysis of the evidence and the findings it made on the basis of that analysis. The judge also accepted the conflict of interest argument. His judgment explains that the Minister was in a flagrant conflict of interest, because of his involvement in the decontamination of the site and the proceedings brought against him. His interest in the ultimate outcome of the case, which the judge characterized as "personal", prevented him from acting with the necessary impartiality. The order was therefore also vitiated by this fundamental defect. This meant that a problem of bias on the part of the decision-maker had arisen. This problem could not be solved through the doctrine of built-in bias, which restricts the scope of the duty of impartiality because of the nature of the management and decision-making structures that govern the discharge of the duties by the Minister.

C. *Quebec Court of Appeal*, [2001] R.J.Q. 1732

12 On appeal by the Minister, the Court of Appeal set aside the judgment of the Superior Court and dismissed the application for judicial review for the reasons stated in the opinion of Thibault J.A. She found, first, that the Superior Court had erred in concluding that the *EQA* did not permit the Minister to issue orders concerning the characterization studies and the restoration and decontamination work in two separate steps. She then held that the financial consequences of the order were not a relevant criterion at the time it was issued. On that point, therefore, the judgment rejected the argument that the interpretation of the Act had been unreasonable.

13 The opinion of Thibault J.A. dealt primarily with the procedural fairness problem, particularly as it related to the Minister's bias and conflict of interest. In her opinion, although the Minister was [page635] exercising a discretionary

administrative power, he was nonetheless bound to act impartially. She conceded that there was an appearance of bias, because of the Minister's financial interest. However, to avoid quashing the impugned decision, she then relied upon the concept of necessity: the Minister alone may perform the functions and exercise the powers provided for by the Act to ensure that the obligations that the legislation imposes on the polluter are met, in order to protect the environment in Quebec. The acknowledgement of a state of necessity justified an exception to the principle of impartiality applied to administrative decision-makers. The Minister's alleged inability to act resulted from the duties imposed on him by law, and not from his voluntary act. Thibault J.A. also did not think that it was necessary to examine the arguments made by Imperial concerning the constitutionality of the Administrative Tribunal of Québec, as she believed it to be of no practical consequence in this case. Imperial's application for judicial review was therefore dismissed in its entirety by the Quebec Court of Appeal. That judgment is the subject of the appeal for which leave was granted to this Court.

IV. Relevant Statutory Provisions

14 *Environment Quality Act*, R.S.Q., c. Q-2

31.42. Where the Minister believes on reasonable grounds that a contaminant is present in the environment in a greater quantity or concentration than that established by regulation under paragraph *a* of section 31.52, he may order whoever had emitted, deposited, released or discharged, even before 22 June 1990, all or some of the contaminant to furnish him with a characterization study, a programme of decontamination or restoration of the environment describing the work proposed for the decontamination or restoration of the environment and a timetable for the execution of the work.

Moreover, where the Minister believes on reasonable grounds that a contaminant prohibited by regulation of the Government is present in the environment or that a contaminant present in the environment is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or to otherwise impair the quality of the soil, vegetation, wildlife or property, [page636] he may issue an order to the same effect to whoever has emitted, deposited, released or discharged, even before 22 June 1990, all or some of the contaminant.

The order shall include a statement of the reasons invoked by the Minister and specify the time within which the documents must be furnished to him. The order takes effect 16 days after its notification or on any later date stated therein.

Within 60 days of receipt of the documents, the Minister may approve the proposed decontamination or restoration work and the timetable for its execution, with or without amendment. Whoever is named in the order as being responsible for the source of contamination shall at the request of the Minister provide him, within the time he fixes, with any information, research findings or study he may need to grant his approval.

Whoever is named in the order as being responsible for the source of contamination shall execute the work in accordance with the timetable, as approved by the Minister.

31.44. At least 15 days before issuing either order, the Minister shall, as prescribed by section 5 of the Act respecting administrative justice (chapter J-3), notify whoever has emitted, deposited, released or discharged the contaminant and, where applicable, the owner of the soil concerned,

stating the reasons on which the order is based, the time within which the documents required under section 31.42 must be furnished to him or the work he may order under section 31.43 and the timetable for its execution, the date on which the order, if issued, is to take effect and the fact that observations may be presented by whoever has been notified and, where applicable, by the owner of the soil concerned within the period of time specified in the prior notice as well as the fact that whoever has been notified may, for the purposes of section 31.43, propose work and a timetable for its execution.

The prior notice shall be accompanied with a copy of every analysis, study or other technical report taken into consideration by the Minister.

For the purposes of section 31.43, the Minister may approve, with or without amendment, the work and the timetable for its execution proposed, where that is the case, by whoever is responsible for the source of contamination, upon presenting observations.

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Upon notifying the prior notice, the Minister shall transmit a copy to the secretary-treasurer or clerk of the municipality where the contaminant has been found.

96. Any order issued by the Minister, except those contemplated in sections 29 and 32.5, in the second paragraph of section 34 and in sections 35, 49.1, 58, 61, 114, 114.1 and 120 may be contested by the municipality or person concerned before the Administrative Tribunal of Québec.

The same applies in all cases where the Minister refuses to grant or revokes an authorization certificate, a certificate, an authorization, an approval other than the approval referred to in the third paragraph of section 31.44, a permission or a permit, refuses to renew a permit, notifies a notice under section 31.46, requires a change in an application made to him, fixes or apportions costs and expenses other than those contemplated in section 32.5 or 35, determines compensation under section 61, notifies a denial of conformity to the proponent of a project, refuses to issue or amends, suspends or revokes a depollution attestation or refuses to amend or to revoke a depollution attestation upon application from the holder thereof.

An operator of an industrial establishment may, where the Minister approves rates with amendments pursuant to section 32.9, contest such decision before the Tribunal.

115.1. The Minister may take all such measures as he may indicate to clean, collect or contain contaminants that are or that are likely to be emitted, deposited, discharged or ejected into the environment or to prevent their being emitted, deposited, discharged or ejected into the environment, where he considers such measures necessary to avert or diminish the risk of damage to public or private property, human beings, wildlife, vegetation or the general environment.

The Minister may claim the direct and indirect costs related to such measures, in the same manner as any debt owing to the Government, from any person or municipality who had custody of or control over the contaminants and from any person or municipality responsible for the emission, deposit, discharge or issuance of the contaminants, as the case may be, whether or not the latter has been prosecuted for infringement of this Act. Liability is joint and several where there are several debtors involved.

Act respecting Administrative Justice, R.S.Q., c. J-3

2. The procedures leading to an individual decision to be made by the Administration, pursuant to norms or standards prescribed by law, in respect of a citizen [page638] shall be conducted in keeping with the duty to act fairly.

...

15. The Tribunal has the power to decide any question of law or fact necessary for the exercise of its jurisdiction.

In the case of the contestation of a decision, the Tribunal may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.

...

137. Each party may plead any ground of law or fact relevant to the determination of his rights and obligations.

V. Analysis

A. *The Issues*

15 A clear understanding of the nature of the issues between the parties in this Court is essential in order to avoid getting sidetracked by related problems. We need to go straight to the precise question the answer to which will determine the outcome of this appeal. Prior to that, however, I will summarize the arguments and problems no longer raised by the parties in this Court. The analysis will then focus on the question that really remains at issue in this appeal.

16 The Administrative Tribunal, the Superior Court and the Court of Appeal all had to determine whether the Minister had the authority to issue two orders in succession, the first concerning the characterization of the site and the second the performance of the work. They considered the requirements to be met before the characterization order could be issued, and discussed the evidence introduced on that point. None of that remains in issue in this Court.

17 The sole issue now at stake in this appeal is the question of procedural fairness or natural justice in relation to the Minister's decision. It remains, though, an important issue. The appellant submits that there was bias, or at the least an appearance of bias, that completely vitiated the decision to issue a characterization order. That argument is [page639] based on the premise that the Minister was bound by a duty of impartiality that he could not fulfil because of the existence of a conflict of interest. The conflict, it is submitted, arose both from the involvement of the Ministère in the decontamination operations performed earlier and from the economic consequences of the legal action that had been taken or was being threatened against it. The Quebec Court of Appeal based its reasoning on the same premise, but then sought to restrict its scope of application through the identification of exceptions to the duty of impartiality, such as

necessity. We will therefore have to consider the nature and effects of that duty, and the conditions and scope of its application to an administrative decision-maker such as the Minister. If the argument that the Minister must be impartial, as framed by the appellant, is found to be without merit, the legal basis for the entire challenge to the decisions of the Tribunal and the Minister will fall apart. The application for judicial review will then have to be dismissed.

B. *The Statutory Framework Created by the Environment Quality Act*

18 Although the appeal heard by the Court raises an administrative law issue in the context of an application for judicial review, the question relates to an environmental protection problem in Quebec. It cannot be resolved without first examining the statutory framework that governs this field in Quebec. The examination of this framework will then make possible the proper identification and definition of the nature of the functions and powers assigned to the Minister, in connection with the administration of environmental legislation. With an accurate understanding of the objectives and operation of that scheme, we will then be better able to ascertain the content of the rules of procedural fairness which are relevant to the performance of the Minister's functions, and to determine whether they were breached when the characterization order was issued (*Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 886, *per* Iacobucci J.).

19 The Quebec legislation reflects the growing concern on the part of legislatures and of society [page640] about the safeguarding of the environment. That concern does not reflect only the collective desire to protect it in the interests of the people who live and work in it, and exploit its resources, today. It may also be evidence of an emerging sense of inter-generational solidarity and acknowledgement of an environmental debt to humanity and to the world of tomorrow (*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, 2001 SCC 40, at para. 1, *per* L'Heureux-Dubé J.).

20 The centrepiece of Quebec's environmental legislation is the *Environment Quality Act*, which was originally enacted in 1972. That Act recognizes that every person is entitled to a healthy environment and to the protection of the living species inhabiting it (s. 19.1 *EQA*). To ensure that this right may be effectively exercised, and that the duties created to give effect to it are executed, the Act provides for a variety of mechanisms for taking action. Various schemes are established for authorizing and monitoring activities that could threaten the environment. Others prohibit or restrict the emission of contaminants and impose obligations to decontaminate. There are also sometimes severe penal sanctions for breaches of the Act. The Superior Court is given broad powers of injunction, to prevent or stop any act that might interfere with the fundamental right to the preservation of the quality of the environment (s. 19.2 *EQA*).

21 The Minister of the Environment plays a key role in the administration of the Act and the regulations under it, and in the implementation of the general policy on which they are based. The legislature has delegated substantial and diverse functions and powers to the Minister for such purposes. Broadly speaking, the Minister prepares plans for the conservation and protection of the environment and sees that they are carried out (s. 2(c) *EQA*). The legislature has also assigned the Minister the task of issuing authorizations, depollution certificates and permits required for any activity that might result in the discharge of contaminants into the environment or reduce the quality of the environment (ss. 22 and 31.11 *EQA*). In addition, the Act gives the [page641] Minister broad powers to act in order to prevent harm to the quality of the environment by making various categories of orders prescribing various corrective measures (see, for example, ss. 25 and 27 *EQA*). Moreover, the Minister may institute the civil or penal proceedings that are necessary for the proper enforcement of the Act (s. 19.3 *EQA* and ss. 106 to 115 *EQA*). The Minister may also have the necessary corrective work executed and its cost recovered from the offenders (ss. 113 to 115.1 *EQA*).

22 The power to make orders that is in issue in this appeal belongs to a class of powers delegated to the Minister which allow him to take action whenever contaminants are found in the environment. Other provisions in the Act, such as ss. 113 and 115.1, authorize the Minister to have the work needed to eliminate the contaminants executed, and to try to recover its cost from the parties responsible later. Section 31.42 provides for a different approach. Under that provision, the Minister may impose an obligation on the parties responsible for the contamination of the environment to

conduct the studies required in order to ascertain the nature of the problem identified, to submit a plan for the corrective work and, where applicable, to have that work performed at their own expense. As we have seen, the order issued under s. 31.42 is subject to appeal to the ATQ. As well, neglect or refusal to carry out such an order entitles the Minister to initiate the civil or penal proceedings provided for in, *inter alia*, Division XIII of the Act. We need not examine the legal rules applicable to the proceedings in this appeal. Nor, in the context of this appeal, do we need to examine the nature and scope of the defences that could be raised in the course of proceedings. Those questions will undoubtedly provide the subject matter of future developments in the case law.

23 Section 31.42 *EQA*, which was enacted in 1990 (S.Q. 1990, c. 26, s. 4), applies what is called the polluter-pay principle, which has now been incorporated into Quebec's environmental legislation. In fact, that principle has become firmly entrenched in environmental law in Canada. It is found in almost all federal and provincial [page642] environmental legislation, as may be seen: *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33; *Arctic Waters Pollution Prevention Act*, R.S.C. 1985, c. A-12, ss. 6, 7; *Fisheries Act*, R.S.C. 1985, c. F-14, s. 42; *Waste Management Act*, R.S.B.C. 1996, c. 482, ss. 26.5(1), 27(1), 27.1, 28.2, 28.5; *Environment Management Act*, R.S.B.C. 1996, c. 118, s. 6(3); *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ss. 2(i), 112, 113(1), 114(1), 116; *Environmental Management and Protection Act*, 2002, S.S. 2002, c. E-10.21, ss. 7, 9, 12, 14, 15, 46; *Contaminated Sites Remediation Act*, S.M. 1996, c. 40, ss. 1(1)(c)(i), 9(1), 15(1), 17(1), 21(a)); *Environmental Protection Act*, R.S.O. 1990, c. E.19, ss. 7, 8, 43, 93, 97, 99, 150, 190(1); *Pesticides Act*, R.S.O. 1990, c. P.11, ss. 29, 30; *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, ss. 16.1, 32, 84, 91; *Crown Forest Sustainability Act*, 1994, S.O. 1994, c. 25, s. 56(1); *Environment Act*, S.N.S. 1994-95, c. 1, ss. 2(c), 69, 71, 78(2), 88, 89, 90; *Environmental Protection Act*, S.N.L. 2002, c. E-14.2, ss. 8(1), 9, 28, 29, Part XIII; *Environmental Protection Act*, R.S.P.E.I. 1988, c. E-9, ss. 7, 7.1, 21; *Environmental Protection Act*, R.S.N.W.T. 1988, c. E-7, ss. 4(2), 5.1, 6, 7, 16. (See R. Daigneault, "La portée de la nouvelle loi dite 'du pollueur-payeur'" (1991), 36 *McGill L.J.* 1027.) That principle is also recognized at the international level. One of the best examples of that recognition is found in the sixteenth principle of *Rio Declaration on Environment and Development*, UN Doc. A/Conf. 151/5/Rev. 1 (1992).

24 To encourage sustainable development, that principle assigns polluters the responsibility for remedying contamination for which they are responsible and imposes on them the direct and immediate costs of pollution. At the same time, polluters are asked to pay more attention to the need to protect ecosystems in the course of their economic activities.

25 The procedure which authorizes the Minister to issue an order against whoever is responsible for the pollution under s. 31.42 *EQA* and its [page643] related provisions represents one of the most important enforcement tools available in Quebec's environmental legislation. The adaptation of such a procedure appeared of singular importance in the search for a solution to soil contamination problems. On that point, it should be noted that the decision of the ATQ quoted passages from the debates of the National Assembly of Quebec in 1990 confirming that legislative objective. Section 31.42 allows for the use of a broad discretion in pursuit of that objective. The Minister may issue a characterization order or prescribe that a work program be carried out. The Act authorizes the Minister to issue an order when he believes on reasonable grounds that a contaminant harmful to the environment is present in a place and may cause harm to human beings or the ecosystem. The order may be made against whoever is responsible for the contamination, including anyone whose activity occurred before the coming into force of the Act in 1990. As discretionary and broad as the power to make orders appears to be, nonetheless important procedural requirements circumscribe it. We must now examine them.

26 Those procedural rules provide more guidance about certain aspects of the general duty of procedural fairness that s. 2 of the *Act respecting Administrative Justice* imposes on administrative decision-makers, by codifying a consistent line of decisions in Canadian administrative law (P. Issalys and D. Lemieux, *L'action gouvernementale: Précis de droit des institutions administratives* (2nd ed. 2002), at p. 847). First, s. 31.44 *EQA* requires that the Minister give 15 days' prior notice of his intention to issue an order. Such a notice shall state, *inter alia*, that the person to whom it is directed may present observations within the time specified, and shall describe the reasons for the proposed decision. Section 31.44 then refers to s. 5 of the *Act respecting Administrative Justice*, which describes the obligations with which an

administrative authority such as the Minister must comply before making an individual and unfavourable decision in respect of a citizen. That provision restates the requirement that the interested parties be given prior notice, also sets out the right to present observations and produce [page644] documents concerning the proposed decision and reiterates that reasons must be given in support of the decision.

27 The record confirms that the necessary notices were given. The appellant had an opportunity to present its observations, which the Minister reviewed before issuing a decision, for which reasons were given. The procedural framework established by the Act was therefore followed. As we have seen, the debate then focused on another issue which is also a component of the principles of natural justice: the nature and scope of the duty of impartiality that applies to the decision-maker, the Minister. That issue was incorrectly addressed, however, on the basis of an erroneous understanding both of the duty of impartiality of the Minister and of the consequences of the conflict of interest to which a breach of that principle allegedly gave rise. At the outset of the analysis, a preferred approach would have been to attempt to determine the applicability of the concept of impartiality relied upon by the appellant, in its full potential reach. In this perspective, the scope of the duty of impartiality upon an administrative decision-maker such as the Minister in the exercise of an essentially discretionary and political power, and the manner in which that duty is discharged, would then have had to be examined.

C. *The Duty of Impartiality in Administrative Law and Variations of That Duty*

28 The duty of impartiality ranks among the fundamental obligations of the courts. The *Canadian Charter of Rights and Freedoms* recognizes the right of any person charged with an offence to be tried by an independent and impartial tribunal (s. 11(d)). In the matters which fall within the legislative jurisdiction of Quebec, s. 23 of the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, recognizes the right to a fair hearing by an independent and impartial tribunal as a fundamental human right. The concept of impartiality refers to the decision-maker's state of mind (*Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 685, *per* Le Dain J.). The decision-maker must approach the issue submitted to him or her with an open mind, [page645] not influenced by personal interests or outside pressure. It is not sufficient that the decision-maker be impartial in his or her own mind, internally, to the satisfaction of his or her own conscience. It is also necessary that the decision-maker appear impartial in the objective view of a reasonable and well-informed observer (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394, *per* de Grandpré J.; also : *Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 S.C.R. 884, 2003 SCC 36, at para. 17, *per* McLachlin C.J. and Bastarache J.). The duty of impartiality, which originated with the judiciary, has now become part of the principles of administrative justice.

29 The principles of natural justice do undeniably govern the actions of administrative decision-makers, as is in fact evidenced by s. 2 of the *Act respecting Administrative Justice* (P. Garant, *Droit administratif* (4th ed. 1996), vol. 2, *Le contentieux*, at pp. 319-320 and 338; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, at p. 1190, *per* Sopinka J.; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 20, *per* L'Heureux-Dubé J.). Imperial therefore argues that the duty of impartiality applies in its full rigour and that the Minister did not meet its requirements.

30 The appellant argued that the Minister had placed himself in an insoluble conflict of interest because of his unfortunate involvement in the failed decontamination of the Lévis Marina site and the legal and financial consequences of that involvement for the Minister. The appellant underlines that the decisions made by the Minister, and the actions taken by him, in the course of those decontamination operations even resulted in the loss of any appearance of impartiality. Accordingly, the appellant submits, his capacity to make an impartial decision was irremediably compromised in the eyes of any properly informed, objective and reasonable observer. However, that is not the full extent of the problem. The appellant then points out that legal action has already been initiated against the Minister by a number of owners of contaminated land, claiming substantial damages from him. In [page646] addition, notices have been sent to the Ministère in a number of cases in which further actions in damages remain possible. The potential risks of damage judgments in those cases put the Minister in a situation in which he is incapable of acting with the necessary independence in applying s. 31.42. In the appellant's submission, the decision to proceed by issuing a characterization

order is necessarily tainted by the suspicion that the Minister's intention in so doing was to insulate himself from the possible legal consequences of his unfortunate involvement in the decontamination operations at the Marina site. Allowing the Minister to act with impunity in these circumstances would amount to ratifying a genuine abuse or misuse of power.

31 The appellant's reasoning thus treats the Minister, for all intents and purposes, like a member of the judiciary, whose personal interest in a case would make him apparently biased in the eyes of an objective and properly informed third party. This line of argument overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions (*Baker, supra*, at para. 21; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682, *per* L'Heureux-Dubé J.; *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, at pp. 323-24, *per* Gonthier J.; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, at p. 636, *per* Cory J.). These variations in the actual content of the principles of natural justice acknowledge the great diversity in the situations of administrative decision-makers and in the roles they play, as intended by legislatures (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, 2001 SCC 52, at para. 24, *per* McLachlin C.J.). The categories of administrative bodies involved range from administrative tribunals whose adjudicative functions are very similar to those of the courts, such as grievance arbitrators in labour law, to bodies that perform multiple tasks and whose adjudicative functions are merely one aspect of broad duties and powers that sometimes include regulation-making [page647] power. The notion of administrative decision-maker also includes administrative managers such as ministers or officials who perform policy-making discretionary functions within the apparatus of government. The extent of the duties imposed on the administrative decision-maker will then depend on the nature of the functions to be performed and on the legislature's intention. In each case, the entire body of legislation that defines the functions of an administrative decision-maker, and the framework within which his or her activities are carried on, will have to be carefully examined. The determination of the actual content of the duties of procedural fairness that apply requires such an analysis.

32 In his management of the Marina file, the Minister made a decision that especially targeted Imperial. That decision may impose substantial expenses on the parties which the Minister considers to be the authors of the pollution of the site in question. There is no doubt that the characterization order calls for major studies in order to determine the condition of the site and for the preparation of recommendations about the measures which should be taken to remedy the contamination of the site. Given these circumstances, we need a concrete definition of the nature and extent of the rules of procedural fairness that apply to the Minister's decision. Is the Minister bound by a duty of impartiality, in its full scope and rigour, as are judges or administrative tribunals that essentially perform adjudicative functions, such as the ATQ or grievance arbitrators in the case of labour law? On this point, the decisions of this Court stress the crucial importance of a careful examination of the applicable legislation in order to determine the nature and scope of the rules of procedural fairness that apply to action taken by an administrative decision-maker (*Ocean Port Hotel, supra*, at paras. 20 and 22; *Bell Canada, supra*, at para. 22).

33 The *Environment Quality Act* defines the nature and extent of the procedural fairness obligations by which the Minister is bound when he issues a characterization order. Those procedural obligations result from the express terms of the Act, such as requirements respecting the structure for managing [page648] environmental problems and the type of functions assigned to the Minister for that purpose. The method of managing environmental problems selected by the legislature creates a situation that the legislature clearly intended to create and to which it clearly agreed. The role assigned to the Minister by the legislation sometimes inevitably places the Minister in a conflict with those subject to the law he administers, in the course of the implementation of environmental legislation.

34 When the Minister has to make a specific decision concerning someone subject to the law, he must comply with precise procedural obligations, which were described earlier. Generally speaking, those obligations require that he give notice to the person concerned, receive and review the representations and information submitted by that person and give reasons to that person for his decision. The effect of this procedural framework is that the Minister must carefully and attentively examine the observations submitted to him. However, that obligation is not equivalent to the impartiality

that is required of a judge or an administrative decision-maker whose primary function is adjudication. In performing his functions, the Minister is involved in the management of an environmental protection system. He must make decisions in a context in which the need for the long-term management of environmental problems plays a prominent role, and in which he must ensure that the fundamental legislative policy on which the interpretation and application of environment quality legislation are based is implemented. The Minister has the responsibility of protecting the public interest in the environment, and must make his decisions in consideration of that interest.

35 What remains to be considered is the problem of the Minister's personal interest, as that interest was expressed by the trial judge. The decision in *Pearlman, supra*, provided necessary guidance on the nature of the personal interest that would put an administrative decision-maker in a conflict of interest within the meaning of the principles of procedural fairness. That case dealt with disciplinary proceedings taken by the Manitoba Law Society against one of its members, who argued [page649] that the members of the Law Society's Discipline Committee were in an unavoidable conflict of interest. The enabling statute of the professional body in question allowed it to award the costs of a disciplinary proceeding against a lawyer subject to those proceedings. In the submission of the appellant Pearlman, the members of the committee therefore had a pecuniary interest in ordering that costs be paid. They would benefit from payment of those costs as members of the Law Society, and that situation created an unacceptable appearance of conflict of interest (*Pearlman*, at p. 883, *per* Iacobucci J.).

36 The Court rejected that argument. It again stressed that the manner in which the rules of natural justice are applied depends on the context (pp. 884-85). The duty to remain untainted by personal interest applied in a context in which the members of the Discipline Committee were performing their duties in the common interests of the profession and for the protection of the public, not for their personal benefit. Any interest they may have had in recovering the costs of the proceedings was too remote and attenuated to give rise to a reasonable apprehension of bias in the eyes of an objective and properly informed observer (pp. 891-92, *per* Iacobucci J.).

37 In light of the foregoing, I am of the view that the Minister was merely defending, in the context of this case, the inseparable interests of the public and the state in the protection of the environment.

VI. Application of the Rules of Procedural Fairness

38 In this case, as was discussed above, the Minister used a discretionary political power for the purposes of the application of s. 31.42 *EQA*. A contamination problem had to be dealt with, and he had to choose the solution that he considered to be the most appropriate. That choice fell within the discretion assigned to him by the Act (Issaly and Lemieux, *supra*, at p. 127). He had to choose among doing nothing, carrying out the necessary investigations and work and then trying to recover the cost from the persons responsible for the contamination of the site, and going directly to those persons and trying [page650] to compel them to take the necessary action at their own expense. The Minister was not performing an adjudicative function in which he was acting as a sort of judge. On the contrary, he was performing his functions of management and application of environmental protection legislation. The Minister was performing a mainly political role which involved his authority, and his duty, to choose the best course of action, from the standpoint of the public interest, in order to achieve the objectives of the environmental protection legislation.

39 Having regard to the context, which includes the Minister's functions viewed in their entirety, as well as to the framework within which his power to issue orders is exercised, the concept of impartiality governing the work of the courts did not apply to his decision. Certainly, the Minister must comply with the procedural fairness obligations set out in the law such as the requirements that notice be given to interested persons and that reasons for the decision be given. Once those requirements have been met, the principles of procedural fairness that apply to the situation, and that are in fact, as we have seen, codified by the *Act respecting Administrative Justice*, required only that he comply with the procedural obligations set out in the law and that he carefully and attentively consider the representations made by the person subject to the law he administers. Moreover, applying the principles stated in *Pearlman*, the interests in issue certainly did not amount to a personal interest within the meaning applied to that expression in the case law. The only interests the Minister was representing were the public interest in protecting the environment and the interest of the

State, which is responsible for preserving the environment. In the circumstances of this case, it would be difficult to separate those interests. In exercising his discretion, the Minister could properly consider a solution that might save some public money. Accordingly, he applied one of the organizing principles of the *Environment Quality Act*, the polluter-pay principle. There was no conflict of interest such as would warrant judicial intervention, let alone any abuse or misuse of power. The Minister acted within the framework provided by the applicable law and in accordance with that law. There was no need to rely on the theory of [page651] overlapping duties or the theory of necessity since there was no ground on which proceedings to review the decision of the Administrative Tribunal of Québec dismissing the appeal from the Minister's decision were available. The appellant's entire challenge rested on an erroneous understanding of the Minister's functions and of the nature of the relevant rules of procedural fairness.

VII. Conclusion

40 For these reasons, the appeal must be dismissed. I would award costs to the Attorney General of Quebec.

Solicitors:

Solicitors for the appellant: Desjardins Ducharme Stein Monast, Montréal.

Solicitor for the respondent: Department of Justice, Québec.

Solicitors for the mis en cause the Administrative Tribunal of Québec: Lemieux Chrétien Lahaye Corriveau, Québec.

Solicitor for the mis en cause the City of Lévis: City of Lévis, Lévis.

Solicitor for the intervener the Attorney General of Ontario: The Ministry of the Attorney General of Ontario, Toronto.

Solicitor of the intervener Friends of the Earth: Sierra Legal Defence Fund, Toronto.

cp/e/qw/qlls



Environmental Registry
Registre environnemental

This is Exhibit 'B' referred to in the
affidavit of JOHN TAYLOR
sworn before me, this
day of AUGUST 2010
Nancy Paul
A COMMISSIONER, ETC.



Ontario

Government of Ontario

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Statement of Environmental Values : Ministry of the Environment

1. INTRODUCTION

The Ontario Environmental Bill of Rights (EBR) was proclaimed in February 1994. The founding principles of the EBR are stated in its Preamble:

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.

While the government has the primary responsibility for achieving this goal, Ontarians should have the means to ensure that it is achieved in an effective, timely, open and fair manner.

The purposes of the Act are:

- To protect, conserve and where reasonable, restore the integrity of the environment;
- To provide sustainability of the environment by the means provided in the Act; and
- To protect the right to a healthful environment by the means provided in the Act.

These purposes include the following:

- The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
- The protection and conservation of biological, ecological and genetic diversity.
- The protection and conservation of natural resources, including plant life, animal life and ecological systems.
- The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
- The identification, protection and conservation of ecologically sensitive areas or processes.

To assist in fulfilling these purposes, the Act provides:

- The means by which Ontarians may participate in the making of environmentally significant decisions by the Government of Ontario;
- Increased accountability of the Government of Ontario for its environmental decision-making;
- Increased access to the courts by residents of Ontario for the protection of the environment; and
- Enhanced protection for employees who take action in respect of environmental harm.

The EBR requires a Statement of Environmental Values from all designated ministries. The designated ministries are listed at:

http://www.ebr.gov.on.ca/ERS-WEB-External/content/index2.jsp?f0=aboutTheRegistry.statement&f1=aboutTheRegistry.statement.value&menuIndex=0_3

Statements of Environmental Values (SEV) are a means for designated government ministries to record their commitment to the environment and be accountable for ensuring consideration of the environment in their decisions. A SEV explains:

- How the purposes of the EBR will be applied when decisions that might significantly affect the environment are made in the Ministry; and

View Ministry Statements of Environmental Values

- ▶ Management Board Secretariat
- ▶ Ministry of Agriculture, Food and Rural Affairs
- ▶ Ministry of Consumer and Commercial Relations
- ▶ Ministry of Culture
- ▶ Ministry of Economic Development and Trade
- ▶ Ministry of Energy Science and Technology
- ▶ Ministry of Health and Long-Term Care
- ▶ Ministry of Labour
- ▶ Ministry of Municipal Affairs and Housing
- ▶ Ministry of Natural Resources
- ▶ Ministry of Northern Development and Mines
- ▶ Ministry of Tourism and Recreation
- ▶ Ministry of Transportation
- ▶ Ministry of the Environment

- How consideration of the purposes of the EBR will be integrated with other considerations, including social, economic and scientific considerations, which are part of decision-making in the Ministry.

It is each Minister's responsibility to take every reasonable step to ensure that the SEV is considered whenever decisions that might significantly affect the environment are made in the Ministry.

The Ministry will examine the SEV on a periodic basis to ensure the Statements are current.

2. MINISTRY VISION, MANDATE AND BUSINESS

The Ministry of the Environment's vision is an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations.

The Ministry of the Environment develops and implements environmental legislation, regulations, standards, policies, guidelines and programs. The Ministry's research, monitoring, inspection, investigations and enforcement activities are integral to achieving Ontario's environmental goals.

Specific details on the responsibilities of the Ministry of the Environment can be found on the Ministry website www.ene.gov.on.ca.

3. APPLICATION OF THE SEV

The Ministry of the Environment is committed to applying the purposes of the EBR when decisions that might significantly affect the environment are made in the Ministry. As it develops Acts, regulations and policies, the Ministry will apply the following principles:

- The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
- The Ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.
- The Ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.
- The Ministry uses a precautionary, science-based approach in its decision-making to protect human health and the environment.
- The Ministry's environmental protection strategy will place priority on preventing pollution and minimizing the creation of pollutants that can adversely affect the environment.
- The Ministry endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle.
- In the event that significant environmental harm is caused, the Ministry will work to ensure that the environment is rehabilitated to the extent feasible.
- Planning and management for environmental protection should strive for continuous improvement and effectiveness through adaptive management.
- The Ministry supports and promotes a range of tools that encourage environmental protection and sustainability (e.g. stewardship, outreach, education).
- The Ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision making.

Decisions on proposed Acts, regulations and policies reflect the above principles. The ministry works to protect, restore and enhance the natural environment by:

- Developing policies, legislation, regulations and standards to protect the environment and human health,
- Using science and research to support policy development, environmental solutions and reporting,
- Ensuring that planning, which aims to identify and evaluate environmental benefits and risks, takes place at the earliest stages in the decision-making process;
- Undertaking compliance and enforcement actions to ensure consistency with

- environmental laws, and
- Environmental monitoring and reporting to track progress over time and inform the public on environmental quality.

In addition, the Ministry of the Environment uses a range of innovative programs and initiatives, including strong partnerships, public engagement, strategic knowledge management, and economic incentives and disincentives to carry out its responsibilities.

4. INTEGRATION WITH OTHER CONSIDERATIONS

The Ministry of the Environment will take into account social, economic and other considerations; these will be integrated with the purposes of the EBR when decisions that might significantly affect the environment need to be made. In making decisions, the Ministry will use the best science available. It will support scientific research, the development and application of technologies, processes and services.

The Ministry will encourage energy conservation in those sectors where it provides policy direction or programs.

5. MONITORING USE OF THE SEV

The Ministry of the Environment will document how the SEV was considered each time a decision on an Act, regulation or policy is posted on the Environmental Registry. The Ministry will ensure that staff involved in decisions that might significantly affect the environment is aware of the Ministry's Environmental Bill of Rights obligations.

The Ministry of the Environment monitors and assesses changes in the environment. The Ministry reviews and reports, both internally and to the Environmental Commissioner's Office, on its progress in implementing the SEV.

6. CONSULTATION

The Ministry of the Environment believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment.

7. CONSIDERATION OF ABORIGINAL PEOPLES

The Ministry of the Environment recognizes the value that Aboriginal peoples place on the environment. When making decisions that might significantly affect the environment, the Ministry will provide opportunities for involvement of Aboriginal peoples whose interests may be affected by such decisions so that Aboriginal interests can be appropriately considered. This commitment is not intended to alter or detract from any constitutional obligation the province may have to consult with Aboriginal peoples.

8. GREENING INTERNAL OPERATIONS

The Ministry of the Environment believes in the wise use and conservation of natural resources. The Ministry will support Government of Ontario initiatives to conserve energy and water, and to wisely use our air, water and land resources in order to generate sustainable environmental, health and economic benefits for present and future generations.

The Ministry of the Environment is committed to reducing its environmental footprint by greening its internal operations, and supporting environmentally sustainable practices for its partners, stakeholders and suppliers. A range of activities is being undertaken to reduce the Ministry's air emissions, energy use, water consumption, and waste generation. These include: monitoring and reducing the Ministry's carbon footprint, promoting energy and water conservation in ministry outreach and educational activities, and supporting government-wide greening and sustainability initiatives.

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Sept. 29/95



Ministry of
Environment
and Energy

Ministère de
l'Environnement
et de l'Énergie

This is Exhibit C referred to in the PROVISIONAL CERTIFICATE OF APPROVAL
affidavit of JOHN TAYLOR FOR A WASTE DISPOSAL SITE
sworn before me, this 20th
day of AUGUST 2010
[Signature]
A COMMISSIONER, ETC.

NO. A600606

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Under the Environmental Protection Act and the regulations and subject to the limitations thereof, this Provisional Certificate of Approval is issued to:

Rainy River Forest Products Inc.
504 Ninth Street North
P.O. Box 5000
KENORA, Ontario
P9N 3Y1

for the use and operation of a 11.0 hectare waste disposal site (landfill) within a total site area of 45.0 hectares, with a maximum capacity not to exceed 1,780,000 cubic meters.

all in accordance with the following plans and specifications:

1. Application for a Certificate of Approval for a Waste Disposal Site dated June 8, 1995, signed by the Vice-President, Rainy River Forest Products Inc., the KGS Group Report titled "RRFP Kenora, Ontario Margach Landfill Certificate of Approval Amendment Application", dated May 1995 and the supporting information plans and specifications submitted therewith.
2. Letter from the Environmental Engineer, Rainy River Forest Products Inc., dated August 8, 1995, and the attached letter from the Chief Geotechnical Engineer/Hydrogeologist, KGS Group, dated August 8, 1995, and the attached Appendix A (Policy 2 Deviation for Iron), Appendix B (Estimates of Infiltration into the Landfill), and Appendix C (MOEE Memorandums Rainy River Forest Products CoFA #A600606).

Located: Parts of Lot 13 and 14, Concession IV UTM Coordinates
Parcels 5483, 5497, 8013 and 5496 Zone 16
Township of Jaffray and Melick E401000 N5515100
Kenora, Ontario

which includes the use of the site only for the disposal of the following categories of waste (Note: Use of the site for additional categories of wastes requires a new application and amendments to the Provisional Certificate of Approval).

100% non-hazardous industrial waste consisting of wood-room bark, primary clarifier sludge, biosolids from the secondary treatment facility, sludge from the recycle facility, general woodwaste, ground scrapings, boiler ash, fly-ash and clinkers.



Ministry of
Environment
and Energy

Ministère de
l'Environnement
et de l'Énergie

**PROVISIONAL CERTIFICATE OF APPROVAL
FOR A WASTE DISPOSAL SITE**
NO. A600606
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DEFINITIONS:

- a) "Ministry" means Ministry of Environment and Energy, Province of Ontario.
- b) "Director" means the Regional Director, Northern Ontario Region, Ministry of Environment and Energy.
- c) "District Manager" means the District Manager, Kenora District Office, Northern Ontario Region, Ministry of Environment and Energy.
- d) "Proponent" means Rainy River Forest Products Inc.
- e) "Site" means the facility described in the Proponent's application dated June 8, 1995, in this Provisional Certificate of Approval and in the supporting documentation referred to herein, to the extent approved by this Provisional Certificate of Approval.

and subject to the following conditions:

- 1. This Provisional Certificate of Approval revokes all previously issued Provisional Certificates of Approval and Notices issued under Part V of the Environmental Protection Act, R.S.O. 1990, issued to Rainy River Forest Products Inc. under Certificate of Approval No. A600606.
- 2. Requirements specified in this Provisional Certificate of Approval are minimum requirements and do not abrogate the need to take all reasonable steps to avoid violating the provisions of applicable legislation.
- 3. The requirements of this Provisional Certificate of Approval are severable. If any requirements of this Provisional Certificate of Approval or the application of any requirements to this Provisional Certificate of Approval to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of this Provisional Certificate of Approval shall not be affected thereby.
- 4. The Proponent shall notify the Director, in writing, of any of the following changes within 30 days of the change occurring:
 - i) change of the owner/operator of the Site or both;
 - ii) change of address of the office of the Proponent or address of the new owner; and
 - iii) any change in the legal name of the Certificate holder, or any change in business name or style where applicable.



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PROVISIONAL CERTIFICATE OF APPROVAL
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A copy of the most current "Initial Notice" or "Notice of Change" (Form 1, 2 or 3 of Ontario Regulation 182, as amended from time to time) filed under the Corporation Information Act shall be included in the notification to the Director.

5. As financial assurance pursuant to Part X-A of the Environmental Protection Act that the Site shall be operated in accordance with this Provisional Certificate of Approval, the Proponent shall no later than December 31, 1995 deposit with the Director of the Financial and Capital Management Branch of the Ministry and copy the Director; i) an irrevocable letter of credit, ii) a surety or performance bond, or iii) a government bond issued or guaranteed by the Government of Canada or Province of Ontario in the amount of 830,000 dollars and 00 cents (\$830,000.00).
6. The Proponent shall, three (3) years following the submission of the financial assurance required by Condition Five (5) herein, and every three years thereafter until the final closure of the Site, submit for the approval of the District Manager, a documented estimate updating the costs of the final closure of the Site. Within 30 days of the acceptance and approval of the estimate, the Proponent shall adjust the financial assurance accordingly.
7. Except as otherwise provided by these conditions, the Site shall be operated in accordance with the application dated June 8, 1995, and the supporting information, plans and specifications submitted therewith.
8. No operations shall be carried out at the Site after 60 days from this condition becoming enforceable, unless this Certificate including the reasons for this condition, have been registered by the Proponent as an instrument in the appropriate Land Registry Office against title to the Site and a duplicate registered copy thereof has been returned by the Proponent to the Director, Northern Ontario Region.
9. No burning of waste shall take place at the Site.
10. Immediately following the completion of the construction of the dike, the Proponent shall establish and carry out the following monthly monitoring program:
 - i) ~~The sampling locations set out in Condition 10 ii) shall be established to the satisfaction of the District Manager. These sampling locations may be changed or abandoned and new locations may be added if, in the reasonable opinion of the District Manager it is necessary to do so to ensure that representative samples are being collected.~~
 - ii) ~~Grab samples shall be collected during each month, April through November, and analyzed for total phosphorus, individual resin and fatty acids, pH and conductivity at the following locations:~~



- a) stream flow upgradient of the landfill (ULC 1H8);
 - b) control structure discharge at the property boundary (SW6);
 - c) discharge flow along the perimeter of the old municipal landfill (ML 1).
- iii) The time interval between consecutive monthly samples shall be at least 30 days.
- iv) After the Proponent obtains a minimum of 16 months (2 years) of sampling and analytical results, the sampling and monitoring frequency indicated in subsection (ii) (a) and (b) may be changed to such frequency as the Director may specify in writing from time to time.
- v) After the Proponent obtains a minimum of eight (8) months (1 year) of sampling and analytical results, the sampling and monitoring frequency indicated in subsection (ii) (c) may be changed to such frequency as the Director may specify in writing from time to time.
- vi) The Proponent shall ensure that samples and measurements taken for the purpose of this Certificate of Approval are taken at a time and in a location characteristic of the quality and quantity of the stream being sampled over the time period being monitored.
11. (1) Immediately following the completion of the construction of the dike, the Proponent shall design, construct and operate the landfill and associated works such that the concentration of total phosphorus present in the discharge at the property boundary (SW6) does not exceed thirty (30) micrograms per litre.
- (2) For the purposes of determining compliance with and enforcing this condition:
- i) Data generated by the monitoring program outlined in condition 11(1) shall be used for the purposes of determining compliance and shall be deemed to be conclusive of the minimum concentration;
 - ii) For the purpose of determining whether the total phosphorus value noted in condition 11(1) has been exceeded, the following will apply:

Should the result of an individual sample exceed the value noted in condition 11(1), then an additional sample shall be obtained within two (2) working days of receipt of the initial result and analyzed for total phosphorus. If the result again exceeds the value noted in condition 11(1), or if no second sample is obtained, then the value shall be deemed to be exceeded;



iii) When an exceedence of the total phosphorus value noted in condition 11(1) occurs as defined in condition 11(2) ii), the Proponent shall take the following measures:

- (a) The control structure at the property boundary shall be immediately closed so that the discharge ceases;
- (b) Water collected upstream of the control structure, at a location within 20 meters of the control structure, shall be sampled weekly and analyzed for total phosphorus;
- (c) The concentration of total phosphorus in water upstream of the control structure shall be reduced by natural wetland attenuation or by chemical treatment, by both methods or by a another method approved in writing by the Director;
- (d) The control structure at the property boundary may be opened so that discharge reoccurs when the result of a sample collected in accordance with condition 11 (2) iii) (b) is less than or equal to the total phosphorus value noted in condition 11(1).

12. By June 30, 1996, and by June 30 of every year thereafter, the Proponent shall submit to the District Manager a ground water monitoring report prepared by an experienced professional hydrogeologist. The report shall contain but is not limited to the following information:

- a) A section of text, maps and diagrams which sufficiently characterize the Site hydrogeology.
- b) A location map which locates the Site within the boundaries of a township, municipality or surveyed/unsurveyed area.
- c) A Site plan(s) which locates: the Site property boundaries; the fill area (active and inactive); all surface water bodies; all significant landmarks (roads, pipelines, hydro lines, etc.); all nearby dwellings/ground water users; all monitoring wells with casing and water level elevations; ground water flow directions and all surface water sampling locations.
- d) The report shall document the ground and surface water sampling protocol, and describe any problems encountered during the sampling runs which may have impacted the reliability of analytical results.
- e) The data must be interpreted by the consultants and presented in a form that is easy to follow. All analytical results for all parameters (dating back to the 1994 analytical results) must be presented in tabular form. All analytical results for the critical contaminants (dissolved organic carbon, total dissolved solids, nitrates, organic nitrogen, copper and aluminum) must be presented graphically on time-series graphs. Trends of ground water quality must be presented graphically on Piper or Durov plots and interpreted.



- ~~f) The report shall identify the "Reasonable Use" (Policy 15-08) of the ground water that is to be impacted, the acceptable concentration of critical contaminants at points of concern (e.g. the site boundary), and triggering levels for various action, such as second tier sampling protocols, or contingency measures. The report should also identify expected and worst case impacts on time vs. concentration graphs.~~
- ~~g) QA/QC protocol must be described.~~
- ~~h) Water quality data must be compared by the consultant to the predicted water quality at the property boundary as presented in Table 5 of the KGS Group Report titled "RRFP/Kenora, Ontario Margash Landfill Certificate of Approval Amendment Application dated May 1995". If in the professional opinion of the consultant, the data indicates that the predicted water quality at the property boundary will be exceeded, then contingency measures shall be immediately implemented.~~
- i) The report must have the conclusions and recommendations of the consultant, especially as they concern future sampling parameters, frequency and protocol.

After the first two (2) years, the frequency of submission of said report may be reviewed and accepted upon approval in writing by the Director.

- 13. The Proponent is to submit an annual report to the District Manager on or before June 30 of each year. The report will contain the following information:
 - a) Total volume of waste deposited in the Site.
 - b) The remaining life expectancy of the Site.
 - c) Any operational problems with the Site.
- 14. By October 31, 1995, the Proponent shall clearly define the boundaries of the working area by installing permanent painted markers that will be visible during the winter months.
- 15. By October 31, 1995, the Proponent shall submit a Fire Management Plan to be approved in writing by the Director.
- 16. By June 1, 1996, the Proponent shall conduct an electromagnetic geophysical survey of the Site. The purpose of the survey is to delineate leachate plumes migrating from the landfill area and to assist in the mapping of subsurface bedrock topography.
- 17. By March 31, 1999, the Proponent shall submit a new water balance calculation based on all available information on the property for approval by the Director. The water balance calculation shall include an estimate of leachate production at current, closure and post-closure conditions.



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18. By March 31, 1999, the Proponent shall submit an evaluation of the effectiveness of the retention pond as a contingency measure for exceedance of surface water quality for approval of by the Director. The evaluation shall take into consideration but is not limited to, property water balance, leachate production and chemistry, site stratigraphy and hydrogeology, surface and ground water and leachate flow paths.
19. By January 31, 1996, the Proponent shall submit for approval of the Director a contingency plan detailing the remedial measures which will be implemented for control of the movement of leachate and a method of treatment in the event that water quality impacts above the allowable are detected or predicted to occur at or beyond the present property boundary.
20. The extraction of aggregate material from the Site is permitted provided that the extraction activities do not impinge on the fill area.
21. The extraction of aggregate at the Site shall not be permitted within 1.5 metres of the high ground water table.
22. Any pumping activities associated with the aggregate extraction, including dewatering and well construction, are prohibited at the Site.
23. The extraction of aggregate is prohibited within thirty (30) metres of the perimeter of the fill area.

24 } new conditions - see amendment.
25 }
26 }

The reasons for the imposition of these conditions are as follows:

1. Conditions One (1) is to clarify that this Provisional Certificate of Approval sets out all of the requirements imposed with respect to this site, other than requirements imposed by legislation.
2. Conditions Two (2) and Three (3) have been included to clarify the legal rights and obligations of this Provisional Certificate of Approval.
3. Condition Four (4) is to ensure that the site is operated under the corporate, limited or the Proponent's own name which appears on the application and supporting information forms submitted for this Provisional Certificate of Approval and not under any name which the Director has not been asked to consider.
4. Condition Five (5) is to ensure that financial assurance is provided on a timely basis and in an amount adequate (on the basis of all the evidence presently available to the Director) to cover the capital and operating costs of the environmental measures for which it is provided.



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5. Condition Six (6) is included to provide an ongoing procedure by which the amount of financial assurance can be revised to reflect accurately, changes in actual costs for the final closure of the site.
6. Condition Seven (7) is to ensure that the site is operated in accordance with the application submitted for the Provisional Certificate of Approval and not on a basis which the Director has not been asked to consider.
7. Condition Eight (8) requiring registration of the Certificate is that Section 46 of the Environmental Protection Act prohibits any use being made of lands after they cease to be used for waste disposal purposes within a period of 25 years from the year in which such lands ceased to be used unless the approval of the Minister for the proposed use has been given. The purpose of this provision is to protect future occupants of the site and the environment from any hazards which might occur as a result of waste being deposited on the site. This prohibition and potential hazard should be drawn to the attention of future owners and occupants by the Certificate being registered on title.
8. Condition Nine (9) is that burning of refuse may create a nuisance and may cause environmental problems.
9. Conditions Ten (10) and Eleven (11) is that a monitoring program is an integral part of the operating and development plan for the Site, and the operation of this site without the monitoring program may create a hazard to the health and safety of any person and would not be in the public interest.
10. Condition Twelve (12), Sixteen (16), Seventeen (17), Eighteen (18) and Nineteen (19) is to ensure that the appropriate steps are taken to minimize and control the impact of leachate production on the natural environment and to operate the site without such condition may result in hazard to the health and safety of any one person or to the natural environment.
11. Condition Thirteen (13) is that the annual report will form an integral part of the landfill operation and operation development as well as ensuring that the development of the site is consistent with the application and supporting documentation. To operate the site without such condition would not be in the public interest and may create a hazard to the health and safety of any one person or to the natural environment.
12. Condition Fourteen (14) is to allow an inspector to readily recognize the boundaries of the site during any season. The operation of the site without such condition may create a hazard to the health and safety of any one person and would not be in the public interest.
13. Condition Fifteen (15) is to reduce potential damage and environmental effects due to fire.



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14. Conditions Twenty (20), Twenty-One (21), Twenty-Two (22), and Twenty-Three (23) is to minimize the impact of aggregate extraction on the landfill operation and the ground water table.



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PROVISIONAL CERTIFICATE OF APPROVAL
FOR A WASTE DISPOSAL SITE
NO. A600606
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You may by written notice served upon me and the Environmental Appeal Board within 15 days after receipt of this Notice, require a hearing by the Board. Section 142 of the Environmental Protection Act, R.S.O. 1990 c. E-19, as amended, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

In addition to these legal requirements, the Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary
Environmental Appeal Board
112 St. Clair Ave. West
5th Floor
Toronto, Ontario
M4V 1N3

AND:

The Director
Section 39, Environmental Protection Act
Ministry of Environment and Energy
Northern Ontario Region
435 James Street South
3rd Floor, Suite 331
Thunder Bay, Ontario
P7E 6E3

DATED AT THUNDER BAY this 29th day of September, 1995.

Wagner
Director
Section 39
Environmental Protection Act



Ministry
of the
Environment

Ministère
de
l'Environnement

Apr. 14/98

NOTICE
Page 1 of 3

This is Exhibit _____ referred to in the
affidavit of _____
sworn before me, this _____
day of _____ 20 _____

A COMMISSIONER, ETC.

Abitibi-Consolidated Inc.
504 Ninth Street North
P.O. Box 5000
Kenora, Ontario
P9N 3Y1

You are hereby notified that the Provisional Certificate of Approval No. A 600606, dated September 24, 1995, which has been issued to Rainy River Forest Products Inc., is being amended as follows:

1. The name of the holder of the Provisional Certificate of Approval on the first page of the Certificate is amended to:

Abitibi-Consolidated Inc.
504 Ninth Street North
P.O. Box 5000
Kenora, Ontario
P9N 3Y1
2. The definitions are revoked and replaced with the following updated definitions:
 - (a) "Certificate" means Provisional Certificate of Approval No. A 600606 dated September 24, 1995 as amended;
 - (b) "Director" means a Director of Approvals Branch;
 - (c) "District Manager" means the District Manager, Thunder Bay/Kenora District, of the Northern Region, Ministry of the Environment;
 - (d) "Ministry" means Ontario Ministry of the Environment;
 - (e) "Company" or "Owner" or "Proponent" means Abitibi-Consolidated Inc.; and
 - (f) "Site" means the facility described in the Proponent's application, the Provisional Certificate of Approval A 600606 and in the supporting documentation referred to herein, to the extent approved by this Notice.
3. On the first page of the Certificate, aluminum phosphate and calcium carbonate from the lime silo are added to the categories of wastes that may be disposed of at the Site.



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The reasons for the imposition of these amendments are as follows:

1. The reason for amendment 1 is included to ensure that the correct name of the Provisional Certificate of Approval holder is referred to.
The reason for amendment 2 is included to update the definitions that are used throughout the Provisional Certificate of Approval.
2. The reason for amendment 3 is included to update the categories of waste that may be disposed of at the Site:

The following is added to Schedule "A" of the Certificate:

Letter and supporting documentation to A. Dominski, P. Eng., Ministry of the Environment from Christian Hansen, B.Sc., C.E.T., Environmental Supervisor, Abitibi-Consolidated Inc., dated February 20, 1998 re: name change.

All other conditions on the original Certificate as amended, are not affected by this Notice, and remain in effect.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990 c. E-19, you may by written notice served upon me and the Environmental Appeal Board within 15 days after receipt of this Notice, require a hearing by the Board. Section 142 of the Environmental Protection Act, as amended provides that the Notice requiring a hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

In addition to these legal requirements, the Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;



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And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary,
Environmental Appeal Board,
300 Yonge St., 12th Floor,
P.O. Box 2382
Toronto, Ontario.
M4P 1E4

AND

The Director,
Section 39, Environmental Protection Act,
Ministry of the Environment,
250 Davisville Avenue, 3rd Floor,
Toronto, Ontario.
M4S 1H2

DATED AT TORONTO this 14th day of April, 1998.

A handwritten signature in black ink, appearing to be "A. Dominski", written over a horizontal line.

A. Dominski, P. Eng.
Director
Section 39
Environmental Protection Act

H/st
c: District Manager, Thunder Bay

This is Exhibit _____ referred to in the
affidavit of _____
sworn before me, this
day of _____ 20____

A COMMISSIONER, ETC.

Jan. 15/01



Ministry of the Environment
Ministère de l'Environnement

AMENDMENT TO PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER A600606
Notice No. 1

Abitibi-Consolidated Inc.
504 - 9th Street North
Kenora, Ontario
P9N 3Y1

Rec'd
January 24, 2001
LEH

Site Location: The Margach Landfill
Jones Road
Town of Kenora, District of Kenora

You are hereby notified that I have amended Provisional Certificate of Approval No. A600606 issued on September 29, 1995 for the Margach landfill, as follows:

I. The following Items are added to the list of plans and specifications:

1. Application for an Amendment to a Certificate of Approval for a Waste Disposal Site Abitibi- Consolidated Inc. prepared by Beak International Inc. and dated September, 2000.
4. Abitibi- Consolidated Inc. Kenora Division Phosphorus Management Plan for the Margach Landfill prepared by Beak International Inc. and dated September, 2000.
5. Letter from B.Houle of Abitibi- Consolidated Inc. to E.Zaltsberg of the MOE dated December 28, 2000 re: a draft Notice to amend Provisional Certificate of Approval No A600606
6. Letter from E.Zaltsberg of the MOE to B.Houle of Abitibi- Consolidated Inc. dated January 11, 2001 re: the groundwater monitoring program and the trigger mechanism.

II. Conditions 10 i) to 10 vi) are revoked and replaced with the following new Conditions:

Condition 10 i) The Proponent shall conduct the surface water monitoring program in accordance with Appendix 1 of Item 5.

ii) The Proponent shall conduct the groundwater monitoring program in accordance with Appendix 2 of Item 5.

Conditions 11 (1) and (2) i), ii) are revoked and replaced with the following new Conditions:

Condition 11 (1) The Proponent shall operate the landfill and associated works such that the concentration

of total phosphorus (TP) at SW-6 does not exceed 1.5 mg/L and the landfill leachate does not cause the calculated 5 year running average TP concentration at SW-8 to exceed 0.1 mg/L. The calculated 5 year running average TP concentration at SW-8 shall be based on the weekly monitoring results collected at SW-8.

- (2) For the purpose of determining whether the TP concentration of 1.5 mg/L has been exceeded, the following will apply:

Should the result of an individual sample exceed 1.5 mg/L, then an additional sample shall be obtained within two (2) working days of receipt of the initial result and analyzed for TP. If the result again exceeds the compliance level or if no second sample is obtained, then the value shall be deemed to be exceeded.

Condition 12 f) is revoked and replaced with the following new Condition:

Condition 12 f) The report shall identify the groundwater trigger mechanism to ensure compliance with the MOE Reasonable Use Guideline B-7 at the compliance location OW-9. The report shall also identify contingency measures to be implemented at the site to put it in compliance with the Reasonable Use Guideline B-7.

Condition 12 h) is revoked and replaced with the following new Condition:

Condition 12 h) Groundwater quality data at OW-9 must be compared by the consultant to the trigger concentrations referred to in 12 f). If the groundwater monitoring data at OW-9 indicate exceedances of the trigger concentrations and these exceedances are due to past or present site operations, then contingency measures referred to in 12 f) shall be implemented.

III. The following new Conditions are added:

Condition 24. By June 30, 2001, and by June 30 of every year thereafter, the Proponent shall submit to the District Manager a total phosphorus loading report which will contain interpretation of the monitoring results at SW-6 and SW-8.

Condition 25. Within one year of the issuance of this Notice the Proponent shall submit for the Director's approval a long term plan to prevent or mitigate soil salinization due to land application of leachate.

Condition 26. Within six (6) months of the issuance of this Notice the Proponent shall install an approved flow measuring device at SW-6.

The reason(s) for this amendment to the Certificate of Approval is (are) as follows:

The reason for Condition 10 i) is to ensure that the surface water monitoring program will be conducted by the Proponent in accordance with supporting documentation submitted.

The reason for Condition 10 ii) is to ensure that the groundwater monitoring program will be conducted by the Proponent in accordance with supporting documentation submitted.

The reason for Condition 11 (1) is to specify the compliance level for the total phosphorus concentration at SW-6 and SW-8.

The reason for Condition 11 (2) is to determine the exceedance above the compliance level for total phosphorus at SW-6.

The reason for Condition 12 f) is to ensure that the groundwater trigger mechanism and contingency measures are in place.

The reason for Condition 12 h) is to ensure that if there are exceedances of trigger concentrations at compliance location OW-9, and if they are due to past or present site operations, then necessary contingency measures shall be implemented.

The reason for Condition 24 is to ensure that an annual report on total phosphorus loading from the site will be submitted to the District Manager.

The reason for Condition 25 is to ensure that a long term strategy to prevent or mitigate soil salinization due to land application of leachate will be submitted for the Director's approval.

The reason for Condition 26 is to ensure that an approved flow measuring device is installed at surface water station SW-6.

This Notice shall constitute part of the approval issued under Provisional Certificate of Approval No.A.600606 dated September 29, 1995.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written Notice served upon me, the Environmental Appeal Board and in accordance with Section 47 of the Environmental Bill of Rights, S.O. 1993, Chapter 28, the Environmental Commissioner, within 15 days after receipt of this Notice, require a hearing by the Board. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;

6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Appeal Board
2300 Yonge St., 12th Floor
P.O. Box 2382
Toronto, Ontario
M4P 1E4

AND

The Environmental Commissioner
1075 Bay Street, 6th Floor
Suite 605
Toronto, Ontario
M5S 2B1

AND

The Director
Section 39, *Environmental Protection Act*
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5

* Further information on the Environmental Appeal Board's requirements for an appeal can be obtained directly from the

Board at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

This instrument is subject to Section 38 of the Environmental Bill of Rights, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek leave to appeal within 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry at www.ene.gov.on.ca, you can determine when the leave to appeal period ends.

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 15th day of January, 2001



Andrzej Dominski, P.Eng.
Director
Section 39, *Environmental Protection Act*

EZ/

c. District Manager, MOE Kenora
Brian Houle, Abitibi Consolidated Inc.

Appendix 1: Surface Water Monitoring Program

(A) Phosphorus Management				
Monitoring Location	Frequency	Parameters		
Margach Landfill: SW-6	Weekly	Total Phosphorus, Flow (using an approved flow measuring device), Water Elevation in constructed wetland		
SW-2, SW-7	Weekly	Total Phosphorus, Flow (estimated using an approved method)		
Laurensons Creek: SW-8	Weekly	Total Phosphorus		
SW-9, ML-1	Monthly	Total Phosphorus		
Natural Background: SW-1, RLT	Monthly	Total Phosphorus		
(B) Other Parameters Management				
Monitoring Location	Number Samples Per Year	Spring (Apr., May)	Parameters Summer (Jun. to Aug.)	Fall (Sep. to Nov.)
Margach Landfill: SW-2, SW-6, SW-7	8	SET A, B, C	SET A, B, C, D	SET A, B, C
Laurensons Creek: SW-8	8	SET A, B, C	SET A, B, C, D	SET A, B, C
SW-9, ML-1	3	SET A, B, C	SET A, B, C, D	SET A, B, C
Natural Background: SW-1, RLT	3	SET A, B, C	SET A, B, C, D	SET A, B, C
Special Studies: SW-2, SW-6	4	Resin and Fatty Acids (RFA's); BOD ₅		
Internal Lab Testing (ACI)		External Lab Testing (Enviro-Test)		
SET A (Field Testing)	SET B (Lab Testing)	SET C (Lab Testing)	SET D (Extended List)	
pH	pH	pH	Calcium	
Conductivity	Conductivity	Conductivity	Magnesium	
		Total Dissolved Solids,	Potassium	
		Alkalinity	Ammonia	
		Hardness	Nitrate plus Nitrite	
		Chloride	Chemical Oxygen Demand	
		Sodium	Total Organic Carbon	
		Sulphate	Tannin & Lignin	
		Total Kjeldahl Nitrogen	Aluminum	
		Total Phosphorus	Barium	
		Phenols	Iron (Fe +3)	
		BOD ₅	Manganese	
			Zinc	

Appendix 2: Groundwater Monitoring Program

(A) Phosphorus Management				
Monitoring Location	Number Samples Per Year	Parameter		
Leachate: <u>OW-7</u>	3	Total Phosphorus		
Groundwater: DH-2, OW-6, <u>DP-1</u>	2	Total Phosphorus (May and July)		
<u>DP-2</u> , <u>DP-3</u> , <u>DP-4</u>	3	Total Phosphorus		
Proxy: <u>DP-6</u>	3	Total Phosphorus		

(B) Other Parameters Management				
Monitoring Location	Number Samples Per Year	Spring (May)	Parameters Summer (July)	Fall (October)
Leachate: <u>OW-7</u>	3	SET A, B, C	SET A, B, C, D	SET A, B, C
Groundwater: DH-2, OW-6, <u>DP-1</u>	2	SET A, B, C	SET A, B, C, D	
<u>DP-2</u> , <u>DP-3</u> , <u>DP-4</u>	3	SET A, B, C	SET A, B, C, D	SET A, B, C
Proxy: <u>DP-6</u>	3	SET A, B, C	SET A, B, C, D	SET A, B, C
Special Studies: DH-6, OW-1, OW-2, OW-4, OW-8, OW-9	1	Resin and Fatty Acids (RFA's); BOD ₅		

Internal Lab Testing (ACI)		External Lab Testing (Enviro-Test)	
SET A (Field Testing)	SET B (Lab Testing)	SET C (Lab Testing)	SET D (Extended List)
Groundwater	pH	pH	Calcium
Elevation	Conductivity	Conductivity	Magnesium
		Total Dissolved Solids	Potassium
		Alkalinity	Ammonia
		Hardness	Nitrate plus Nitrite
		Chloride	Chemical Oxygen Demand
		Sodium	Total Organic Carbon
		Sulphate	Aluminum
		Total Kjeldahl Nitrogen	Barium
		Total Phosphorus	Iron (Fe +3)
		Phenols	Manganese
			Zinc

Wells not producing

This is Exhibit referred to in the
affidavit of
sworn before me, this
day of 20

Oct. 23/02

A COMMISSIONER, ETC



Ontario

Ministry of the Environment
Ministère de l'Environnement

AMENDMENT TO PROVISIONAL CERTIFICATE OF
APPROVAL
WASTE DISPOSAL SITE
NUMBER A600606
Notice No. 3

Abitibi-Consolidated Company of Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec
H3B 5H8

Site Location: The Margach Landfill
Jones Road
Kenora Town, District Of Kenora, Ontario

You are hereby notified that I have amended Provisional Certificate of Approval No. A600606 issued on September 29, 1995 and amended by Notices dated April 14, 1998 and January 15, 2001 for a Waste Disposal Site, as follows:

The name and address of the Company has changed:

FROM: Abitibi-Consolidated Inc.
504 - 9th Street North
Kenora, Ontario
P9N 3Y1

TO: Abitibi-Consolidated Company of Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec
H3B 5H8

All in accordance with the letter dated December 17, 2001 from Sylvain Aird, Abitibi-Consolidated Company of Canada and supporting documentation from Stikeman Elliott, Barristers & Solicitors.

This Notice shall constitute part of the approval issued under Provisional Certificate of Approval No. A600606 dated September 29, 1995.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written notice served upon me and the Environmental Review Tribunal within 15 days after receipt of this Notice, require a hearing by the Tribunal. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Review Tribunal
2300 Yonge St., 12th Floor
P.O. Box 2382
Toronto, Ontario
M4P 1E4

AND

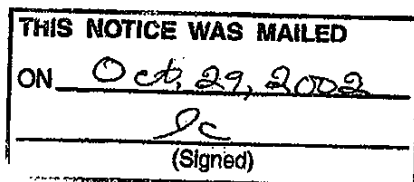
The Director
Section 39, *Environmental Protection Act*
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5

* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the

Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 23rd day of October, 2002



K. Chang

Karlene Chang
Director
Section 39, *Environmental Protection Act*

NB/

c: District Manager, MOE Thunder Bay
Kenora Area Office

This is Exhibit _____ referred to in the
affidavit of _____
sworn before me on this _____
day of _____ 20 _____

Oct. 11/07
OK KN C6 250

A COMMISSIONER, ETC.



Ministry of the Environment
Ministère de l'Environnement

AMENDMENT TO PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER A600606
Notice No. 1
Issue Date: October 11, 2007

Abitibi-Consolidated Company of Canada
504 Ninth Street North
P.O. Box 5000
Kenora, Ontario
P9N 3Y1

Site Location: Margach Landfill
Part Lot Part 13 and 14, Concession IV
City of Kenora, District Of Kenora

You are hereby notified that I have amended Provisional Certificate of Approval No. A600606 issued on September 29, 1995, and amended on April 14, 1998, January 15, 2001, and October 23, 2002 for the Margach landfill, as follows:

I. The following new Conditions are added:

27. In addition to the waste types listed on page one of the original certificate of approval, the site is approved for the disposal of solid non-hazardous building demolition debris consisting of wood, plastic, asbestos and associated materials, all in accordance with items 7, 8 and 9 of Schedule "A".
28. The demolition debris, mentioned in condition 27, shall originate at Abitibi-Consolidated Company of Canada (Kenora Division) properties only and be received at a rate which shall not exceed 600 cubic meters per day and 50,000 cubic meters in total.
29. The site is not approved for the accumulation, sorting or transfer of recyclable materials or of inert materials except when the inert materials are to be used as cover.

II. The following Items are added to Schedule "A":

7. Application for an Amendment to a Certificate of Approval for a Waste Disposal Site, signed by Michael O'Flaherty, Project Manager, Abitibi- Consolidated Inc. and dated May 7, 2007.
8. Email from Mr. Bert Smith, Principal, KGS Group, to Alan Tan, MOE, dated August 27, 2007, providing Asbestos Waste Management Plan / Asbestos Transportation Plan from Abitibi Consolidated and its demolition contractor Delsan Services Environnementaux Inc.

9. Letter from Michael O'Flaherty, Project Manager, Abitibi Consolidated, to City of Kenora, dated September 26, 2007, providing responses to the comments of City of Kenora.

The reason for this amendment to the Certificate of Approval is as follows:

To approve the acceptance of the demolition debris from the demolition of Abitibi-Consolidated Company of Canada (Kenora Division) properties, all in accordance with the application dated May 7, 2007.

This Notice shall constitute part of the approval issued under Provisional Certificate of Approval No. A600606 dated September 29, 1995, as amended.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written Notice served upon me, the Environmental Review Tribunal and in accordance with Section 47 of the Environmental Bill of Rights, S.O. 1993, Chapter 28, the Environmental Commissioner, within 15 days after receipt of this Notice, require a hearing by the Tribunal. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Review Tribunal
2300 Yonge St., Suite 1700
P.O. Box 2382
Toronto, Ontario
M4P 1E4

AND

The Environmental
Commissioner
1075 Bay Street, 6th Floor
Suite 605
Toronto, Ontario
M5S 2B1

AND

The Director
Section 39, Environmental Protection Act
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5

- * Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

This instrument is subject to Section 38 of the Environmental Bill of Rights, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek leave to appeal within 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry at www.ene.gov.on.ca, you can determine when the leave to appeal period ends.

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 11th day of October, 2007



Tesfaye Gebrezghi, P.Eng.
Director
Section 39, *Environmental Protection Act*

AT/

c: District Manager, MOE Kenora
J. Bert Smith, KGS Group

This is Exhibit _____ referred to in the
affidavit of _____
sworn before me, this _____
day of _____ 20 _____

OK KN CG 250

July 29/10



A COMMISSIONER, ETC.

Ministry of the Environment
Ministère de l'Environnement

AMENDMENT TO PROVISIONAL CERTIFICATE OF
APPROVAL

WASTE DISPOSAL SITE

NUMBER A600606

Notice No. 2

Issue Date: July 29, 2010

Abitibi-Consolidated Company of Canada
PO Box 5000 Stn Main
Kenora, Ontario
P9N 3Y1

Site Location: The Margach Landfill
Part Lot Part 13 and 14, Concession IV
City of Kenora, District Of Kenora

You are hereby notified that I have amended Provisional Certificate of Approval No. A600606 issued on September 29, 1995 and amended on April 14, 1998, January 15, 2001, October 23, 2002 and October 11, 2007 for a Waste Disposal Site (landfill), as follows:

- I. Conditions (5) and (6) of this Certificate are hereby revoked and replaced with the following new Condition (5):

Financial Assurance

- 5.1 Within twenty (20) days of issuance of this notice the Owner shall submit to the Director, Financial Assurance, as defined in Section 131 of the Act, for the amount of two million ninety-four thousand six hundred and seventy dollars (CAD\$2,094,670). This Financial Assurance shall be in a form acceptable to the Director and shall provide sufficient funds for the Site's final closure and ongoing environmental monitoring and maintenance.
- 5.2 Commencing on March 31, 2013 and at intervals of three (3) years thereafter, the Owner shall submit to the Director, a re-evaluation of the amount of Financial Assurance to implement the actions required under Condition 5.1. The re-evaluation shall include an assessment based on any new information relating to the environmental conditions of the Site and shall include the costs of additional monitoring and/or implementation of contingency plans required by the Director upon review of the closure plan and annual reports. The Financial Assurance must be submitted to the Director within twenty (20) days of written acceptance of the

re-evaluation by the Director.

5.3 Commencing on March 31, 2011, the Owner shall prepare and maintain at the Site an updated re-evaluation of the amount of Financial Assurance required to implement the actions required under Condition 5.1 for each of the intervening years in which a re-evaluation is not required to be submitted to the Director under Condition 5.2. The re-evaluation shall be made available to the Ministry, upon request.

5.4 The amount of Financial Assurance is subject to review at any time by the Director and may be amended at his/her discretion. If any Financial Assurance is scheduled to expire or notice is received, indicating Financial Assurance will not be renewed, and satisfactory methods have not been made to replace the Financial assurance at least sixty (60) days before the Financial Assurance terminates, the Financial Assurance shall forthwith be replaced by cash.

The reason for this amendment to the Certificate of Approval is as follows:

The reason for Condition (5) is to ensure that sufficient funds are available to the Ministry to clean up the Site in the event that the Company and/or any future owners are unable or unwilling to do so.

This Notice shall constitute part of the approval issued under Provisional Certificate of Approval No. A600606 dated September 29, 1995

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written notice served upon me and the Environmental Review Tribunal within 15 days after receipt of this Notice, require a hearing by the Tribunal. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed;

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Review Tribunal
655 Bay Street, 15th Floor
Toronto, Ontario

AND

The Director
Section 39, *Environmental Protection Act*
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A

M5G 1E5

Toronto, Ontario
M4V 1L5

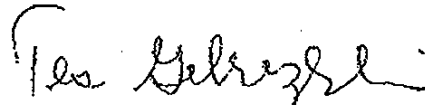
* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the

Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 29th day of July, 2010

THIS NOTICE WAS MAILED
ON <u>July 30, 2010</u>
<u>AK</u>
(Signed)



Tesfaye Gebrezghi, P.Eng.
Director
Section 39, *Environmental Protection Act*

DL/

c: District Manager, MOE Kenora ✓
J. Bert Smith, Principal, Kontzamantis, Graumann, Smith, McMillan Inc.

**ABITIBI
CONSOLIDATED**

November 18, 2005

Ontario Ministry of the Environment
Thunder Bay District Office
435 James Street South
3rd Floor Suite 331
Thunder Bay, Ontario
P7E 6S7
Tel (807) 475-1690, Fax (807) 473-3160

Attention: Mr. Rod Adams, MOE District Manager (by Fax - hardcopy to R. Boivin) *6 pages*

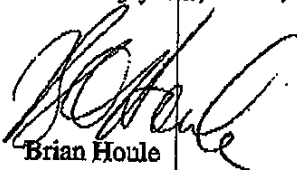
Subject: Margach Landfill Site, C.ofA. Financial Assurance

As per condition 5 and 6 of Certificate of Approval A600606, an update of the calculation of financial assurance required for Margach Landfill is attached. Within this calculation, it is estimated that a financial assurance of \$1,760,227 is required to cover future costs for contingency plans, planned closure of Margach Landfill and long term maintenance of the landfill through 25 years of post closure.

The current financial assurance for Margach Landfill is \$1,796,511 which is about \$30,000 more than this 2005 update indicates. This reduction is in part based on updates to inflation and interest rates which were provided by the MOE.

If more documentation or clarification is required, please do not hesitate to phone me at (807) 467-3351 or e-mail brian_houle@abicon.com.

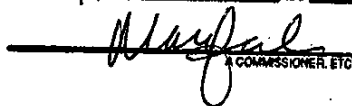
Sincerely yours,


Brian Houle
Environmental Superintendent

MINISTRY OF ENVIRONMENT
NOV 23 2005
KENORA DISTRICT

c. Derrick Lindgren Roberta Shumka Orlo Mejia Jean-Claude Paradis
Ray Boivin (by fax 468-2735 and hardcopy)

This is Exhibit D referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 20 10


A COMMISSIONER, ETC.

See Dec. 2005 revision

Page 2
Mr. Houle

1.0 CONTINGENCY PROGRAM DURING OPERATION

A flow measuring weir has been installed at SW-6, as required by the Amended C of A, Condition 26. A long term plan to prevent or mitigate soil salinization due to land application of leachate has been submitted to MOE as per the Amended C of A Condition 25. The annual hydrogeological report (submitted by June 30 each year) identifies the groundwater trigger mechanism to ensure compliance with the MOE Reasonable Use Guideline B-7 at location QW-9 and contingency measures (if required), plus Total Phosphorus monitoring at the discharge point SW-6 and contingency (if required), consistent with the amended Provisional Certificate of Approval No. A600808. The cost allowance for the contingency program includes annual operating costs of \$5,500 per year.

Landfill Leachate - The original design of the solid non-hazardous woodwaste landfill was based on dilution attenuation of leachate within the muskeg bog area to the west of the landfill. The southeast portion of the landfill has been capped to promote runoff and to minimize infiltration. Under the Amended C of A, the leachate is collected by a series of perimeter ditches and directed to a leachate retention pond that discharges to a constructed wetland west of the landfill. The wetlands provide storage of the leachate and biological treatment through deposition of sediment, adsorption of phosphorus and direct uptake of phosphorus by the aquatic vegetation. Both surface water discharge and groundwater quality are monitored seasonally and assessed to ensure that the applicable water quality guidelines are met. When the landfill site is closed with a clay cap, leachate production will be reduced significantly, such that the natural attenuation is anticipated to be adequate.

Landfill Gas - This woodwaste landfill is located within a remote area with the water table near surface and the closest resident at approximately 1 km. Landfill gas is not a concern at the landfill.

Hydrogeological Study - A detailed hydrogeological study was completed for the initial site approval process in 1985. An update hydrogeological study was completed in conjunction with the 1995 application for an amendment to the C of A. Annual reviews are also done in association with the annual monitoring program. No contingency program is required for hydrogeological studies.

2.0 PLANNED CLOSEOUT

The conceptual closure cost estimate for the landfill was updated based on the recent cost incurred in 2003 to cap a 8.7 hectare area at the Mud Lake landfill. Based on a cost of \$89,300/ha (2003) for grading, cover and revegetation, the 10-ha site would cost \$893,000 to close, plus approximately \$22,000 for ditching and fencing and 10% engineering for a total of \$1,006,500 (2003 dollars). The inflated total closure cost, using annual inflation at 4%, is estimated to be \$1,090,000 in 2005 and \$1,434,368 in 2012, the projected closure date.

3.0 COST OF LONG TERM MONITORING

The amount of financial assurance should include the one time cost of installation of any additional monitoring facilities (allow \$11,000), plus the post closure annual cost for sampling and analyzing (\$8,500/yr) and assessing/reporting on the results (\$8,500/yr), estimated to be a total of \$17,000 in 2005 dollars. Long-term monitoring is assumed to be for 25 years, beginning in the closure year.

Page 3
Mr. Houle

4.0 TOTAL FINANCIAL ASSURANCE

A summary of the leachate contingency, closure and post closure activities and costs are summarized on Table 1. The total annual costs for these activities until the year 2035 are summarized on Table 2. The present value of total expenses including contingency, closure and 25 years of post closure monitoring is \$2,374,843 in 2012 dollars (closure date) and \$1,760,227 in 2005 dollars.

Please contact Bert Smith (204) 478-3220 if you have any questions.

Sincerely,



J. Bert Smith, P.Eng.
Principal

MPS/af
Enclosure

TABLE 1
CONTINGENCY, CLOSURE AND POST CLOSURE ACTIVITIES AND COSTS

A: Contingency Program During Operation			
1	\$ 5,500.00	Annual payment	Pre-closure leachate contingency program
B: Planned Closeout			
2	\$ 1,090,000.00	One-time payment	Grading, final cover and topsoil application
C: Long Term Monitoring			
3	\$ 8,500.00	Annual payment	Post-closure site inspections and routine maintenance
4	\$ 8,500.00	Annual payment	Waste monitoring, lab analyses and report preparation
5	\$ 12,000.00	One-time payment	Repair/replacement of monitoring wells
	10.0	hectares	Site area requiring final cover application and seeding
	10.0	hectares	Site area requiring topsoil application
	15%	percentage	Contingency
	91,500	cubic metres/year	Current quantity of waste accepted at site per annum
	4%	percentage	Inflation rate
	4.37%	percentage	Interest (discount) rate

NOTE:

Values for inflation rate (4%) and interest (discount) rate (4.37%) are based on current MOE recommended rates.

Item #	1	2	Contingency (%)	3	4	5			
One-time Payment		\$ 1,000,000	15%				\$ 11,000		
Annual Payments:	\$ 5,500			\$ 8,500	\$ 8,500				
YEAR	Years after Closure	1	2	Contingency (%)	3	4	5	Current \$:	2012 \$:
2005		\$ 5,500	\$ 1,000,000	\$ 164,325	\$ 8,500	\$ 8,500	\$ 11,000		
2006		\$ 5,720	\$ 1,123,000	\$ 170,988	\$ 8,640	\$ 8,640	\$ 11,440		
2007		\$ 5,940	\$ 1,176,048	\$ 177,734	\$ 8,194	\$ 8,194	\$ 11,598		
2008		\$ 6,167	\$ 1,229,102	\$ 184,843	\$ 9,661	\$ 9,581	\$ 12,274		
2009		\$ 6,434	\$ 1,275,148	\$ 192,287	\$ 9,344	\$ 9,344	\$ 12,988		
2010		\$ 6,692	\$ 1,326,152	\$ 199,828	\$ 10,342	\$ 10,342	\$ 13,693		
2011		\$ 6,950	\$ 1,379,198	\$ 207,824	\$ 10,765	\$ 10,765	\$ 13,916		
2012 (Closure)	0	\$ 7,229	\$ 1,484,908	\$ 216,240	\$ 11,185	\$ 11,185	\$ 14,478	\$ 1,604,000	1,604,000
2012	1	\$ 7,527			\$ 11,629	\$ 11,629		\$ 30,793	28,334
2013	2	\$ 7,829			\$ 12,068	\$ 12,068		\$ 32,028	29,308
2014	3	\$ 8,141			\$ 12,582	\$ 12,582		\$ 33,308	29,226
2015	4	\$ 8,462			\$ 13,085	\$ 13,085		\$ 34,638	29,791
2016	5	\$ 8,803			\$ 13,609	\$ 13,609		\$ 36,023	29,087
2017	6	\$ 9,158			\$ 14,159	\$ 14,159		\$ 37,484	28,904
2018	7	\$ 9,524			\$ 14,719	\$ 14,719		\$ 38,960	28,881
2019	8	\$ 9,905			\$ 15,308	\$ 15,308		\$ 40,521	28,779
2020	9	\$ 10,301			\$ 15,920	\$ 15,920		\$ 42,142	28,877
2021	10	\$ 10,713			\$ 16,557	\$ 16,557		\$ 43,828	29,576
2022	11	\$ 11,142			\$ 17,219	\$ 17,219		\$ 45,581	28,474
2023	12	\$ 11,586			\$ 17,908	\$ 17,908		\$ 47,404	28,873
2024	13	\$ 12,051			\$ 18,628	\$ 18,628		\$ 49,300	28,273
2025	14	\$ 12,533			\$ 19,370	\$ 19,370		\$ 51,272	28,172
2026	15	\$ 13,035			\$ 20,144	\$ 20,144		\$ 53,323	28,072
2027	16	\$ 13,559			\$ 20,950	\$ 20,950		\$ 55,456	27,973
2028	17	\$ 14,098			\$ 21,788	\$ 21,788		\$ 57,674	27,874
2029	18	\$ 14,652			\$ 22,660	\$ 22,660		\$ 59,981	27,778
2030	19	\$ 15,219			\$ 23,568	\$ 23,568		\$ 62,381	27,677
2031	20	\$ 15,800			\$ 24,509	\$ 24,509		\$ 64,876	27,578
2032	21	\$ 16,400			\$ 25,488	\$ 25,488		\$ 67,471	27,481
2033	22	\$ 17,013			\$ 26,500	\$ 26,500		\$ 70,170	27,383
2034	23	\$ 17,639			\$ 27,556	\$ 27,556		\$ 72,975	27,289
2035	24	\$ 18,282			\$ 28,672	\$ 28,672		\$ 75,888	27,193
TOTAL PLANNED CLOSURE AND POST-CLOSURE COSTS								\$ 2,892,163	\$ 2,774,843

1 Inflation is assumed to be constant at an annual rate of 4.00% .
2 Interest is assumed to be constant at an annual rate of 4.50%
3 Each scheduled payment is determined from the corresponding 2005 payment by adjusting for inflation
4 See Table 1 for activity name description
5 15% contingency applied to Items 1 and 2
6 Estimated closure date based upon current landfill deposit rate of \$1,500/msy from KGS Spring 2004
Wesler County and Capacity Review Report, June 2005.

This is Exhibit VE referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30 th
day of AUGUST 20 10
Ward
A COMMISSIONER, ETC.

Ministry of the Environment
Environmental Assessment and
Approvals Branch
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416)314-8452
Telephone: (416) 314-8225

Ministère de l'Environnement
Direction des évaluations et des
autorisations environnementales
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécopieur : (416)314-8452
Téléphone: (416) 314-8225



January 28, 2005

Douglas D. Raoul, Environmental Superintendent
Abitibi-Consolidated Company of Canada
504 Ninth Street North, P.O. Box 5000
Kenora, Ontario
P9N 3Y1

RECEIVED

FEB 01 2005

Business and Fiscal
Planning Branch

Dear Sir/Madam:

**Re: Financial Assurance for Certificate of Approval : Waste Disposal Sites No. A600606
Compliance With Condition No. 5, Submission of Financial Assurance**

We acknowledge receipt of letter dated January 26, 2005, from the Canadian Imperial Bank of Commerce, enclosing amendment No. AMD003, also dated January 26, 2005, amending Letter of Credit No. SBGM702796 to incorporate the beneficiary's address as requested in our letter of January 10, 2005. This amendment will be forwarded to our Business and Fiscal Planning Branch.

If you have any questions regarding the above, please contact Brad Ross at the above phone number.

Yours truly,

A handwritten signature in black ink, appearing to read "Ian Parrott", written over a horizontal line.

Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

c: District Manager, MOE Thunder Bay District Office
Area Supervisor, MOE, Kenora Area Office

1. Name of the person or organization
2. Address
3. City
4. State
5. Zip

Richard Brown, MOE, Business and Fiscal Planning Branch



B. Russ

Trade Finance Centre

By UPS Courler

26 January 2005

To: Ministry of Environment
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5
Attn: Ian Parrot

Re: Letter of credit No: SBGM702796
Applicant Abitibi-Consolidated Company Of
Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec H3B 5H2

Dear Sir/Madam:

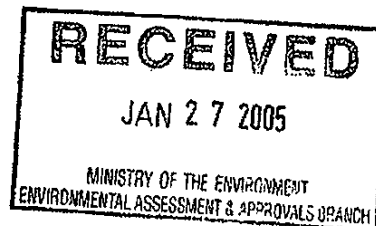
We enclose herewith the original amendment to the above referenced Standby Letter of Credit. This amendment is processed in accordance with your letter dated January 10, 2005.

For any inquiries, please contact our office Hue Quoc Tang @ (514) 876-4766.

Please direct your correspondence to CIBC, 1155 Rene Levesque Blvd. West, 12th Floor, Montreal, Quebec H3B 3Z4 Attn: Standby Letters Of Credit quoting our reference.

Cc:
Abitibi-Consolidated Company Of
Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec H3B 5H2
Attn: Carol MacArthur (fax: 394-2267)

08612 - CCSC - Toronto, Ontario
Attn: Teresa Sarte (fax : 416-980-5855)





Trade Finance Centre
26 January 2005

5621348
2106C BIL-0309

Place and date of issue *Lieu et date d'émission*

Letter of Credit Reference No.

SBGM702796

Amendment No.

AMD003

Beneficiary:

Ministry of Environment and Energy
40 St. Clair Avenue West, 9th Floor
Toronto, Ontario M4V 1M2

Applicant:

Abitibi-Consolidated Company Of
Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec H3B 5H2

This letter of credit has been amended as follows:

Beneficiary's name and address have been corrected to read:

Ministry of the Environment
Environmental Assessment and
Approvals Branch, 2 St. Clair Ave.
West, Fl. 12A, Toronto, ON M4V 1L5

All other terms and conditions of this credit remain unchanged.

This amendment is to be considered as part of the above credit and must be attached thereto.

For Canadian Imperial Bank of Commerce

Counter Signature


Q. H. TANG

Authorized Signature


LUCY SOURALLI

Done 20/5

Ministry of the Environment
Environmental Assessment and
Approvals Branch
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416)314-8452
Telephone: (416) 314-8225

Ministère de l'Environnement
Direction des évaluations et des
autorisations environnementales
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécopieur: (416)314-8452
Téléphone: (416) 314-8225



Ontario

May 9, 2003

Douglas D. Raoul, Environmental Superintendent
Abitibi-Consolidated Company of Canada
504 Ninth Street North, P.O. Box 5000
Kenora, Ontario
P9N 3Y1

Rec may 14/03

Dear Sir/Madam:

**Re: Financial Assurance for Certificate of Approval : Waste Disposal Sites No. A600606
Compliance With Condition No. 5, Submission of Financial Assurance**

We acknowledge receipt of amendment No. AMD002, dated May 1, 2003, from the Canadian Imperial Bank of Commerce, increasing the amount of Letter of Credit No. SBGM702796 by CAD\$966,511.00, for a new total of CAD\$1,796,511.00.

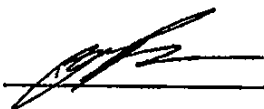
This Financial Assurance, submitted pursuant to Condition No. 5 of your Provisional Certificate of Approval for a Waste Disposal Site (Margach Landfill) No. A600606 is acceptable to the Director under Section 39 of the Environmental Protection Act and will be forwarded to our Business and Fiscal Planning Branch for safekeeping. However, please request CIBC to issue an amendment to Letter of Credit No. SBGM702796 as follows:

- (1) The beneficiary's name should read "Her Majesty the Queen in Right of Ontario as represented by the Minister of the Environment", and
- (2) The beneficiary's address should read "Ministry of the Environment, Environmental Assessment and Approvals Branch, 2 St. Clair Avenue West, Floor 12A, Toronto, Ontario M4V 1L5".

Please ensure that all future correspondence, including revisions to existing Financial Assurances, is sent to the above address. A template of a draft Letter of Credit is attached for your future reference.

If you have any questions regarding the above, please contact Brad Ross at the above phone number.

Yours truly,



Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

c: District Manager, MOE Thunder Bay
Area Office, MOE, Kenora
Richard Brown, MOE, Business and Fiscal Planning Branch
Catherine Levis, Manager - Environment, Abitibi-Consolidated,
1155 Metcalfe Street, Suite #800
Montreal, Quebec
H3B 5H2



Trade Finance Centre

BY UPS COURIER

01 May 2003

To: Ministry of Environment and Energy
40 St. Clair Avenue West, 9th Floor
Toronto, Ontario M4V 1M2

Attn: Richard C. Brown
Tel: 416-314-5561

Re: Standby letter of credit no: SBGM702796
For: 830,000.00 CAD
Issued in your favour:
For account of: Abiti-Consolidated Inc.

600606
RECEIVED

MAY 05 2003

Business & Fiscal
Planning Branch

Dear Sir:

Please find enclosed our original amendment to standby letter of credit no. SBGM702796 together with one copy.

For any inquiries, please contact our office Quoc Hue Tang @ (514) 876-4766

Please direct your correspondence to CIBC, Trade Finance Centre, 1155 Rene Levesque Blvd. West, 12th Floor, Montreal, Quebec H3B 3Z4 Attn: **Standby Letters of Credit** quoting our reference.

C.C. Abiti-Consolidated Inc.
Montreal, QC
Attn: Lucie Dadeluca
Fax: 394-2267

CIBC World Markets
Toronto, ON
Attn: Teresa Sarte
Fax 416-980-5855

*faxed to head
2052 May 5/03*



Trade Finance Centre
May 1, 2003

2105C BIL-98/09
5621348

Place and date of issue *Lieu et date d'émission*

Letter of Credit Reference No.

SBGM702796

Amendment No.

AMD002

Beneficiary:

Ministry of Environment and Energy
40 St. Clair Avenue West, 9th Floor
Toronto, Ontario M4V 1M2

Applicant:

Abitibi-Consolidated Company Of
Canada
1155 Metcalfe Street, Suite 800
Montreal, Québec H3B 5H2

This letter of credit has been amended as follows:

- 1- The amount of this standby letter of credit is increased by CAD966,511.00.
- 2- This Standby Letter of Credit is now available for payment against our receipt of required documents at our new address as follows:

Canadian Imperial Bank of Commerce
Trade Finance Centre
The Atrium-on-Bay
7th Floor, 595 Bay Street
Toronto, Ontario M5G 2M8

All other terms and conditions of this credit remain unchanged.

This amendment is to be considered as part of the above credit and must be attached thereto.

For Canadian Imperial Bank of Commerce

Counter Signature

Chiang IT-1249
B. H. TANG

Authorized Signature

Wozniak W-1439
B. WOZNIAK

This is Exhibit 'F' referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 20 10
Margach
A Commissioner, ETC.

Margach



Ministry of the
Environment
Ministère de
l'Environnement
Ontario

Provincial Officer's Order

Environmental Protection Act, R.S.O. 1990, c.E 19 (EPA)
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)
Pesticides Act, R.S.O. 1990, c. P11 (PA)
Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)
Nutrient Management Act, 2002, S.O. 2002, c.4

Order Number
4705-6X3TSZ

Incident Report No.
5642-6WHQUX

To: Abitibi-Consolidated Inc.
Post Office Box 5000
Kenora, Ontario, P9N 3Y1
Canada

Site: Pt. Lot13 & 14, Con.1V, Jones Road
Kenora, District Of Kenora

Pursuant to my authority under EPA Section 157.1, I order you to do the following:

Work Ordered

Item No. 1

Compliance Date

2007/06/30
(YYYY/MM/DD)

By June 30, 2007, prepare and submit a written plan and implementation schedule with measures intended to reduce leachate impact at the waste disposal site boundaries.

- A. While this Order is in effect, a copy or copies of this order shall be posted in a conspicuous place.
- B. While this Order is in effect, report in writing, to the District or Area office, any significant changes of operation, emission, ownership, tenancy or other legal status of the facility or operation.

This Order is being issued for the reasons set out in the annexed Provincial Officers Report which forms part of this Order.

Issued at Kenora this 19th day of January, 2007.

Ray Boivin

Ray Boivin
Badge No: 493
Kenora Area Office
Tel: (807) 468-2728

APPEAL/REVIEW INFORMATION

REQUEST FOR REVIEW

You may request that this order be reviewed by the Director. Your request must be made in writing (or orally with written confirmation) within seven days of service of this order and sent by mail or fax to the Director at the address below. In the written request or written confirmation you must,

- specify the portions of this order that you wish to be reviewed;
- include any submissions to be considered by the Director with respect to issuance of the order to you or any other person and with respect to the contents of the order;
- apply for a stay of this order, if necessary; and provide an address for service by one of the following means:
 1. mail
 2. fax

The Director may confirm, alter or revoke this order. If this order is revoked by the Director, you will be notified in writing. If this order is confirmed or amended by order of the Director, the Director's order will be served upon you. The Director's order will include instructions for requiring a hearing before the Environmental Review Tribunal.

DEEMED CONFIRMATION OF THIS ORDER

If you do not receive oral or written notice of the Director's decision within seven days of receipt of your request, this order is deemed to be confirmed by order of the Director and deemed to be served upon you.

You may require a hearing before the Environmental Review Tribunal if, within 15 days of service of the confirming order deemed to have been made by the Director, you serve written notice of your appeal on the Environmental Review Tribunal and the Director. Your notice must state the portions of the order for which a hearing is required and the grounds on which you intend to rely at the hearing. Except by leave of the Environmental Review Tribunal, you are not entitled to appeal a portion of the order or to rely on grounds of appeal that are not stated in the notice requiring the hearing. Unless stayed by the Environmental Review Tribunal, the order is effective from the date of service.

Written notice requiring a hearing must be served personally or by mail upon:

The Secretary
Environmental Review Tribunal
P.O. Box 2382
2300 Yonge Street, Suite 1700
Toronto, ON M4P 1E4

and

Director (Provincial Officer Orders)
Ministry of the Environment
Thunder Bay District Office
331-435 James St S
Thunder Bay ON P7B 6S7
Fax: (807)475-1754
Tel: (807)475-1315

Where service is made by mail, it is deemed to be made on the fifth day after the date of mailing and the time for requiring a hearing is not extended by choosing service by mail.

Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 314-4600

Fax: (416) 314-4506

www.ert.gov.on.ca

FOR YOUR INFORMATION

- Unless stayed by the Director or the Environmental Review Tribunal, this order is effective from the date of service. Non-compliance with the requirements of this order constitutes an offence.
- The requirements of this order are minimum requirements only and do not relieve you from complying with the following:
 - any applicable federal legislation;
 - any applicable provincial requirements that are not addressed in the order; and
 - any applicable municipal law.
- The requirements of this order are severable. If any requirement of this order or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the order are not affected.
- Further orders may be issued in accordance with the legislation as circumstances require.
- The procedures to request a review by the Director and other information provided above are intended as a guide. The legislation should be consulted for additional details and accurate reference.



Ministry of
the Environment

Ministère de
l'Environnement

Provincial Officer's Report

Order Number
4705-6X3TSZ

Abitibi-Consolidated Inc.
Post Office Box 5000
Kenora, Ontario, P9N 3Y1
Canada

Site
Margach Landfill (A600606)
Pt. Lot13 & 14, Con.1V, Jones Road
Kenora, District Of Kenora

Observations

1. Abitibi-Consolidated Inc. is the owner and operator of a waste disposal site known as the Margach Landfill. This site is operated under the authorization of certificate of approval A600606 and is approved to receive 100 percent non-hazardous industrial waste consisting of wood room bark, primary clarifier sludge, biosolids from the secondary treatment facility, sludge from the recycle facility, general wood waste, ground scrapings, boiler ash, fly ash and clinkers. The site currently receives waste from Kenora Forest Products and Kenora Timberstrand (iLevel by Weyerhaeuser). In June 2005 it was estimated that the site contained 1,197,500 cubic metres of waste.
2. Condition 12 of the certificate of approval requires the submission of an annual ground water monitoring report by June 30 of each year. These reports contain all groundwater data for the site.
3. The annual ground water monitoring reports are reviewed by a Ministry of the Environment hydrogeologist who comments on the content of the reports and identifies compliance issues associated with the contents of the reports and environmental issues arising from the operation of the site.
4. On December 12, 2006, I received information from the Regional Hydrogeologist, Technical Support Section, Northern Region, regarding the information presented in the 2004 and 2005 annual monitoring reports for the Margach Waste Disposal Site. The hydrogeologist stated that contaminant levels in excess of the reasonable use guidelines at the southeast property boundary indicate that the site is having an off-site impact. The hydrogeologist further suggested that the

site owner should develop a plan and initiate measures to address this impact. Finally, it was suggested that the annual monitoring report, for 2006 and due by June 30, 2007, should contain the plan and a schedule for implementation of the recommendations contained in the plan.

5. Section 157.1(1) of the Environmental Protection Act states that a provincial officer may issue an order to any person who owns or who has management or control of an undertaking or property if the provincial officer reasonably believes that the requirements specified in the order are necessary or advisable so as to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property or to prevent, decrease or eliminate an adverse effect that may result from the discharge of a contaminant from the undertaking or the presence or discharge of a contaminant in, on or under the property.

Offence(s)

Suspected Violation(s)/Offence(s):	
Act - Regulation - Section, Description (General Offence)	



Ray Boivin
Provincial Officer
Badge Number: 493
Date: 2007/01/19
District Office: Kenora Area Office



Ministry of the
Environment

Certificate of Service

Environmental Protection Act s.175(1)(b)
Ontario Water Resources Act s. 115(1)(b)
Pesticides Act s.51(1)(b)
Safe Drinking Water Act, 2002 s.159(3)
Nutrient Management Act, 2002, S.O. 2002, c.4

I, Ray Boivin, a designated Provincial Officer under the Environmental Protection Act, certify that I served a true copy of this Provincial Officer's Order, order number: 4705-6X3TSZ on the following person(s) or company ordered in the manner indicated.

Person/Company
Abitibi-Consolidated Inc.

Address
Post Office Box 5000
Kenora Ontario
Canada
P9N 3Y1

Left With
Mike O'Flaherty

Position
Site Manager

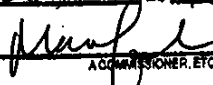
Date of Service
2007/01/19

Method of Service:
☒ By Hand
☐ Mail
☐ Fax

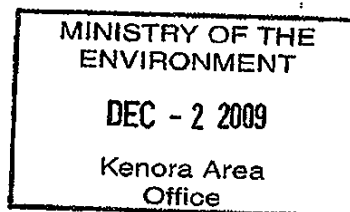
January 19, 2007

A handwritten signature in black ink, appearing to read "Ray Boivin".

Ray Boivin
Provincial Officer
Badge No. 493
Kenora Area Office

This is Exhibit 'G' referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 20 10

COMMISSIONER, ETC.

1155 Metcalfe Street, Suite 800
Montréal, Québec H3B 5H2 Canada
T 514 875-2160 abtibi-bowater.com



OK KNC6 610
A600606
abiti-bowater 

November 17, 2009

Mr. Ray Boivin
Ontario Ministry of the Environment
808 Robertson Street, 2nd Floor
P.O. Box 5150
Kenora, ON P9N 3X9

Re: AbitibiBowater Margach Waste Disposal Site (A6000606) Closure Plan
MOE Officers Order 4705-6X3TSZ dated January 19, 2007

Dear Mr. Boivin:

In response to your letter dated November 3, 2009, I would first like to thank you for your continued support and cooperation during the dismantling of our Kenora mill site.

With respect to the above referenced MOE Officers Order, the Company has submitted a corrective action plan and subsequent updates as part of its 2006, 2007 and 2008 annual Margach Landfill Site Reports.

The initial corrective action plan provided for the closure of the landfill, including document preparation, surface grading, perimeter ditching, and construction of an engineered clay cap. At the time, the landfill closure process was expected to take two years after all mill demolition waste would be placed at the site. Based on the 2006 assumption that all such waste would be placed in the landfill by the spring of 2008, it was anticipated that the closure plan would be implemented 2008-2010.

In our 2007 report, we have revised the date by which the waste would be placed in the landfill to "fall 2008, or early 2009". In our 2008 report, we have revised this date again to the fall of 2009".

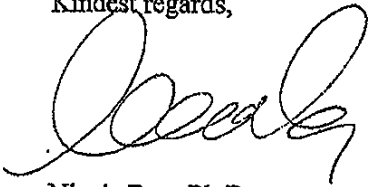
I hereby confirm that, with the exception of small quantities of waste that should not impact the closure process, we have completed the disposal of mill demolition waste at the Margach landfill on October 21, 2009 and have already initiated work on the landfill closure process by having a complete survey of the landfill completed in early November 2009 in order for our consultants to work on the design of the final cap over the coming winter months.

As of this date, the Company continues to expect that the completion of the closure process will take two years after all the waste has been deposited into the landfill, i.e. October 21, 2009.

Finally, as you may be already aware, AbitibiBowater and certain of our subsidiaries filed for court protection in Canada and the United States as the best option for continuing our operations in a process that will allow us to both restructure for the long term and ensure fair and equitable treatment for our stakeholders. For more information on the progress of our restructuring process, please refer to our website at <http://www.AbitibiBowater.com>.

I trust that this satisfies your needs, and remain available to further discuss as needed.

Kindest regards,



Nicole Roy, Ph.D.
Manager, Environment, Site Remediation
AbitibiBowater

Copy - Margach WAS Inspection.

Ministry of the Environment
435 James Street South
Suite 331
Thunder Bay, ON P7E 6S7
Tel.: (807) 475-1218
Fax: (807) 475-1754

Ministère de l'Environnement
435 rue James sud
Bureau 331
Thunder Bay, ON P7E 6S7
Fax: (807) 475-1218
Téléco.: (807) 475-1754



Ontario

This is Exhibit H referred to in the
affidavit of J. H. TAYLOR
sworn before me, this 30
day of AUGUST 2010

April 14, 2010

MEMORANDUM

To: Ray Boivin
Senior Environmental Officer
Kenora Area Office

From: Alisdair Brown
Regional Hydrogeologist
Technical Support Section, Northern Region

Re: Annual Monitoring Reports 2006 to 2008
Abitibi Margach Waste Disposal Site
Kenora, Ontario

MINISTRY OF THE
ENVIRONMENT

APR 15 2010

Kenora Area
Office

As requested, I have reviewed the groundwater related portions of the following reports prepared by KGS Group Consulting Engineers (KGS):

- "Abitibi-Consolidated Company of Canada, Kenora Division - Kenora, Ontario, Margach Landfill Site, 2008 Water Quality and Capacity Review Report with Further Update to Response for Provincial Officers Order 4705-6X3TSZ" dated June 2009.
- "Abitibi-Consolidated Company of Canada, Kenora Division - Kenora, Ontario, Margach Landfill Site, 2007 Water Quality and Capacity Review Report with Update to Response for Provincial Officers Order 4705-6X3TSZ" dated June 2008; and
- "Abitibi-Consolidated Company of Canada, Kenora Division - Kenora, Ontario, Margach Landfill Site, 2006 Water Quality and Capacity Review Report with Response to Provincial Officers Order 4705-6X3TSZ" dated June 2007.

The Margach Landfill Site was established to receive industrial waste from the Abitibi's Kenora mill, consisting primarily of wood waste, primary clarifier sludge, secondary treatment biosolids, recycling sludge, and ash. The mill was permanently closed in 2005, but the landfill was maintained to accept demolition waste from the dismantling and demolition of the mill facilities. During this time period, ash was also accepted from the neighbouring Weyerhaeuser lumber mill up to 2007. It is understood that the demolition of the Kenora mill is now complete, and that closure of the landfill site will be initiated in 2010 through the submission of a Closure Plan to the MOE. Considering the imminent closure of this site, I have focussed my comments on identifying potential groundwater issues which should be addressed in the Closure Plan.

Groundwater monitoring at the site has demonstrated elevated contaminant levels in monitoring wells south of the site which are indicative of a leachate plume originating from the fill area and extending to and beyond the south property boundary. The leachate plume is characterized primarily by elevated concentrations of iron, manganese, conductivity, and total dissolved solids. Upon confirmation that the leachate plume extended beyond the south property boundary with concentrations in excess of those established by the Reasonable Use policy, Abitibi has made arrangements to extend the contaminant attenuation zone (CAZ) to the south limits of the neighbouring Hydro One right of way. The monitoring program was also expanded to include additional wells within the Hydro One right of way. Monitoring of these wells has indicated that attenuation of the leachate is occurring within the expanded CAZ, although there are some parameters which exceed the Reasonable Use limits within this area.

Based on monitoring results at the site, it is apparent that leachate continues to be generated at this site, with a leachate plume extending beyond the property limits. The extension of the contaminant attenuation zone is a significant step in addressing the potential off-site impact, and it is my opinion that proper closure of the site should significantly reduce leachate production at

the site. The closure plan to be submitted should consider all measures possible to reduce infiltration of precipitation into the site, including a low permeability cover and site grading to enhance runoff away from the fill area. At this time, it is my recommendation that the current monitoring program at the site should be maintained. However, it is understood that the consultant is considering some changes to the program, and these should be reflected as recommendations of the closure plan. Further to this, it is my recommendation that given the inactive status of this site and the clear understanding of the leachate plume, that reporting frequency for this site should be reduced to once every three years. Again, this should be reflected as a recommendation of the closure plan.

If you have any questions regarding the above comments and recommendations, do not hesitate to contact me. The purpose of the preceding review is to provide advice to the Ministry of the Environment regarding groundwater and subsurface soil conditions based on the information provided in the above referenced documents. The conclusions, opinions and recommendations of the reviewer are based on information provided by others, except where otherwise specifically noted. The Ministry cannot guarantee that the information that has been provided by others is accurate or complete. A lack of specific comment by the reviewer is not to be construed as endorsing the content or views expressed in the reviewed material.



Alisdair Brown, P.Eng.
Regional Hydrogeologist

C.C. Regional File: SI DK JF C6 250 (A600606) Margach WDS

U:\gw reviews\industrial landfills\abittibi margach\margach 2006 to 2008 amrs apr 6 2010.doc

This is Exhibit I referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30
day of AUGUST 20 16

[Signature]
ACCOMPLISHED, ETC.

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

Petitioners

and

THE LAND REGISTRAR FOR THE LAND
REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF
SAGUENAY

and

THE LAND REGISTRAR FOR THE LAND
REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF ABITIBI

and

THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL
RIGHTS

Mises-en-cause

and

ERNST & YOUNG INC.

Monitor

**AMENDED SECOND MOTION FOR THE ISSUANCE OF VARIOUS ORDERS
AUTHORIZING THE SALE OF NON-CORE PROPERTIES AND FOR THE
ISSUANCE OF A RE-AMENDED RECEIVERSHIP ORDER IN RESPECT OF 4513541
CANADA INC.**

TO JUSTICE GASCON OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, PETITIONERS SUBMIT THE FOLLOWING:

I - PREAMBLE

1. On April 17, 2009, this Court issued an order (as subsequently amended and restated, the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA" and the "CCAA Proceedings") in respect of (i) Abitibi-Consolidated Inc. ("ACI") and subsidiaries thereof (the "Abitibi Petitioners")¹, (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (the "Bowater Petitioners")², and (iii) certain partnerships (the "Partnerships")³ (the Abitibi Petitioners, the Bowater Petitioners and the Partnerships being collectively referred to as "Petitioners").
2. Pursuant to the Initial Order, Ernst & Young Inc. (the "Monitor") was appointed as Monitor of Petitioners under the CCAA and a stay of proceedings was granted in favour of Petitioners which was extended until September 8, 2010.

II - BACKGROUND

3. The Petitioners currently own the following properties (collectively, the "Non-Core Properties" and each, a "Non-Core Property") situated in Quebec, Ontario, British Columbia and New-Brunswick (the "Provinces"):

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 Petitioner 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.

- a) [...]
- b) a former wood residues landfill site situated at Pointe-aux-Outardes, in the City of Baie-Comeau, Province of Quebec, as more fully described at Exhibit R-2 of the present Motion (the "Former Outardes Property");
- c) a current wood residues landfill site situated at Pointe-aux-Outardes, in the City of Baie-Comeau, Province of Quebec, as more fully described at Exhibit R-3 of the present Motion (the "Current Outardes Property");
- d) a former sawmill, now partially dismantled, situated in the City of Saguenay, Province of Quebec, as more fully described at Exhibit R-4 of the present Motion (the "La Baie Property");
- e) a former wood residues landfill site situated in the parish of Baker Brook, County of Madawaska, Province of New-Brunswick, as more fully described at Schedule D of Exhibit R-5 of the present Motion (the "Baker Brook Property");
- f) a vacant emplacement located in the City of Baie-Comeau, Province of Quebec, as more fully described at Exhibit R-6 of the present Motion (the "Parc-des-Pionniers Property");
- g) a vacant emplacement located in the City of Baie-Comeau, Province of Quebec, as more fully described at Exhibit R-7 of the present Motion (the "Terrain-en-aiguille Property");
- h) a vacant emplacement located in the City of Baie-Comeau, Province of Quebec, as more fully described at Exhibit R-8 of the present Motion (the "Terrain-en-carré Property");
- i) a freehold land located in the City of Dryden, Province of Ontario, as more fully described at Schedule D of Exhibit R-9 of the present Motion (the "Dryden Mercury Property");
- j) an industrial landfill located in the Town of Goldriver, Province of British Columbia, as more fully described at Schedule D of Exhibit R-10 of the present Motion (the "Highway 28 Property");
- k) various freehold lands, constituting vacant industrial lands located in the City of Kenora, Province of Ontario, as more fully described at Schedule D of Exhibit R-11 of the present Motion (the "Kenora Margach Landfill Property"); and
- l) a vacant industrial land and leachate pumping system located in the City of Kenora, Province of Ontario, as more fully described at Schedule D of Exhibit R-12 of the present Motion (the "Kenora Mud Lake Landfill Property").

4. As stated in greater detail hereinafter, the Non-Core Properties are (i) subject to potential environmental liability exposure (the "Environmental Exposure"), (ii) not required for future operations and (iii) in any event of little utility as a result of the Environmental Exposure.
5. The Environmental Exposure consists of historic liabilities arising from ownership/occupation of the Non-Core Properties. These properties are alleged to have been impacted as a result of events which occurred prior, and in some cases long prior, to the filing of these CCAA proceedings.
6. Given the applicable environmental regulatory context which generally creates liability as a result of control or management of a property, the Petitioners (or any successor thereof) would remain subject to the Environmental Exposure should they continue to own or occupy the Non-Core Properties upon CCAA emergence. Such potential continuing liability may be material and thus adversely impact the formulation of a viable restructuring plan by Petitioners.
7. On the other hand, the sale of the Non-Core Properties as contemplated herein will allow the Abitibi Petitioners to crystallize any potential former "owner/occupier" environmental liabilities associated with the Non-Core Properties and to adequately deal with any claims resulting therefrom in the restructuring plan recently filed, without having to contend with the potentially material contingency of the Environmental Exposure upon emergence. Stakeholders with environmental claims with respect to the Non-Core Properties will not be prejudiced as the treatment of such claims [...] in these CCAA proceedings will be equivalent or superior to the treatment such claims would receive in the context of a liquidation.

III - ORDERS SOUGHT

8. Petitioners hereby seek the issuance of the following orders (collectively the "Vesting Orders") in connection with the Non-Core Properties :
 - a) [...]
 - b) an order authorizing and approving the execution by Abitibi-Consolidated Company of Canada ("ACCC") and Samson Belair/Deloitte & Touche Inc. ("Deloitte") in its capacity as court-appointed receiver for and on behalf of the Purchaser of the deed of sale with respect to the Former Outardes Property (the "Former Outardes Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-15;
 - c) an order authorizing and approving the execution by ACCC and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of the deed of sale with respect to the Current Outardes Property (the "Current Outardes Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-16;

- d) an order authorizing and approving the execution by Les Produits Forestiers Saguenay Inc. ("PFSI") and the Deloitte in its capacity as court-appointed receiver for and on behalf of Purchaser of the deed of sale with respect to the La Baie Property (the "La Baie Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-17;
- e) an order authorizing and approving the execution by ACCC and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of the deed of sale with respect to the Parc-des-Pionniers Property (the "Parc-des-pionniers Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-18;
- f) an order authorizing and approving the execution by ACCC and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of the deed of sale with respect to the Terrain-en-aiguille Property (the "Terrain-en-aiguille Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-19;
- g) an order authorizing and approving the execution by ACCC and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of the deed of sale with respect to the Terrain-en-carré Property (the "Terrain-en-carré Deed of Sale"), a draft copy of which is communicated herewith as Exhibit R-20;

(the [...] Former Outardes Deed of Sale, Current Outardes Deed of Sale, La Baie Deed of Sale, Parc des pionniers Deed of Sale, Terrain-en-aiguille Deed of Sale and Terrain-en-carré Deed of Sale are collectively referred to as "Deeds of Sale")

- h) an order authorizing and approving the execution by ACCC and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser and the execution by PFSI and Deloitte in its capacity as court-appointed receiver for and on behalf of Purchaser of respectively two global hypothecs with respect to the Non-Core Properties located in the Province of Quebec (collectively referred to as the "Hypothecs"), draft copies of which are communicated herewith *en liasse* as Exhibit R-21 [...]
- i) an order authorizing and approving the execution by Bowater Couturier Inc. and Bowater Canadian Forest Products Inc. ("BCFPI") and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of an *Indenture* (the "Baker Brook Indenture"), a *General Security Agreement* (the "Baker Brook GSA") and a *Mortgage* (the "Baker Brook Mortgage"), all with respect to the Baker Brook Property, draft copies of which are communicated herewith *en liasse* as Exhibit R-22;
- j) an order authorizing and approving the execution by BCFPI and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of an *Indenture* (the "Dryden Mercury Indenture"), a *General*

Security Agreement (the "Dryden Mercury GSA") and a *Mortgage* (the "Dryden Mercury Mortgage"), all with respect to the Dryden Mercury Property, draft copies of which are communicated herewith *en liasse* as Exhibit R-23;

- k) an order authorizing and approving the execution by BCFPI and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of an *Indenture* (the "Highway 28 Indenture"), a *General Security Agreement* (the "Highway 28 GSA") and a *Mortgage* (the "Highway 28 Mortgage"), all with respect to the Highway 28 Property, draft copies of which are communicated herewith *en liasse* as Exhibit R-24;
- l) an order authorizing and approving the execution by Abitibi-Consolidated Inc. ("ACI") and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of an *Indenture* (the "Kenora Margach Landfill Indenture"), a *General Security Agreement* (the "Kenora Margach Landfill GSA") and a *Mortgage* (the "Kenora Margach Landfill Mortgage"), all with respect to the Kenora Margach Landfill Property, draft copies of which are communicated herewith *en liasse* as Exhibit R-25;
- m) an order authorizing and approving the execution by ACI and Deloitte in its capacity as court-appointed receiver for and on behalf of the Purchaser of an *Indenture* (the "Kenora Mud Lake Landfill Indenture"), a *General Security Agreement* (the "Kenora Mud Lake Landfill GSA") and a *Mortgage* (the "Kenora Mud Lake Landfill Mortgage"), all with respect to the Kenora Mud Lake Landfill Property, draft copies of which are communicated herewith *en liasse* as Exhibit R-26;

(the Baker Brook Indenture, the Dryden Mercury Indenture, the Highway 28 Indenture, the Kenora Margach Landfill Indenture and the Kenora Mud Lake Landfill Indenture are collectively referred to as the "Indentures");

(the Baker Brook GSA, the Dryden Mercury GSA, the Highway 28 GSA, the Kenora Margach Landfill GSA and the Kenora Mud Lake Landfill GSA are collectively referred to as the "GSAs");

(the Baker Brook Mortgage, the Dryden Mercury Mortgage, the Highway 28 Mortgage, the Kenora Margach Landfill Mortgage and the Kenora Mud Lake Landfill Mortgage are collectively referred to as the "Mortgages");

- n) the issuance of vesting orders in connection with the transactions contemplated in the above-mentioned agreements; and

- o) a number of orders typically requested along with the above mentioned orders;

the whole as set forth in the draft Vesting Orders communicated herewith as Exhibit R-2 to R-12.

9. The Petitioners currently expect that the Deeds of Sale, the Indentures, the GSAs, the Mortgages and the Hypothecs will be executed substantially in the form communicated as Exhibits R-14 to R-26 shortly following the hearing on this Motion.
10. The Petitioners also hereby seek certain amendments to the Amended Receivership Order (as defined hereafter) issued by this Court to increase the funding of the receivership to a maximum of \$1,700,000.00 (the "Re-Amended Receivership Order") the whole as set forth in the draft order communicated herewith as Exhibit R-27.

IV - GROUND FOR THIS MOTION

Previous orders

11. On April 27, 2010, this Court issued an order approving the transfer of certain non-core properties of ACI and ACCC to the Purchaser and vesting all right, title and interest in and to those non-core properties in and with the Purchaser, free and clear of and from all rights, claims, obligations, etc. (the "First Vesting Order"), the whole as appears from the record of this Court.
12. The same day, this Court issued an order appointing Ernst & Young Inc. as receiver, without security, of all the assets, undertakings and properties of the Purchaser, including the non-core properties contemplated in the First Vesting Order (the "Receivership Order"), the whole as appears from the record of this Court.
- 12A. On July 21st, 2010, this Court issued an order amending the Receivership Order to substitute Ernst & Young Inc. from Deloitte as receiver, without security, of all the assets, undertakings and properties of the Purchaser (the "Amended Receivership Order"), the whole as appears from the record of this Court.
13. The Petitioners now seek similar orders with respect to the Non-Core Properties.

The Non-Core Properties

14. All of the Non-Core Properties are either closed and/or partially dismantled sawmills, vacant lots and/or former and current wood residues landfill sites and the Petitioners have had no material active operations with respect to most of them since many years.

15. The Environmental Exposure related to each of the Non-Core Properties is estimated to be as follows:

- a) [...]
- b) With respect to the Former Outardes Property, the Environmental Exposure consists of potential soil and groundwater contamination, as well as leachate discharge, resulting from the accumulation of wood residues that occurred prior to the filing of the CCAA proceedings. This landfill site is also potentially impacted by the former Regional Solid Wastes Landfill site that is adjacent. The Environmental Exposure cannot be estimated but results from a risk of landslide in that sector, that would result in a discharge of wood residues into a creek nearby. This landfill site is capped and seeded. The Former Property is assessed at approximately \$3,156.42 being comprised in an assessment unit of 413,300 square meters assessed at \$5,900, the property transferred representing only 221,110 square meters;
- c) With respect to the Current Outardes Property, the Environmental Exposure that could be incurred is estimated to be \$2,000,000. The Environmental Exposure consists of the cost associated with the collection, the transportation and the treatment of the leachate generated by the accumulation of wood residues into a watertight landfill cell. Should the leachate withdrawal cease, it would result into potential soil and groundwater contamination. The accumulation of wood residues occurred prior to the filing of the CCAA proceedings and continued until now. The Current Outardes Property is assessed at approximately \$2,743.44 being comprised in an assessment unit of 413,300 square meters assessed at \$5,900, the property transferred representing only 192,180 square meters;
- d) With respect to the La Baie Property, the Environmental Exposure that could be incurred is estimated to be \$800,000. The Environmental Exposure consists of soil and groundwater contamination, resulting from industrial activities (spills, leaks, backfilling, storage, etc.) that occurred prior to the filing of the CCAA proceedings. Environmental Site Assessments (ESA), Phase I and II, conducted on the site have identified areas of concern and soil contamination above applicable limits. The La Baie Property is assessed at \$695,100;
- e) With respect to the Baker Brook Property, the Environmental Exposure that could be incurred is estimated to be \$280,000 per year. The Environmental Exposure consists of the cost associated with the collection, the transportation and the treatment of the leachate generated by the accumulation of wood residues. The accumulation of wood residues occurred prior to the filing of the CCAA proceedings. The leachate is currently transported by truck for treatment at the Edmunston municipal treatment plant. The potential impact from stopping leachate

collection and its transportation away from the site is leachate discharge potentially reaching and impacting the nearby river and likely, to a much lesser extent, impacting the soil and groundwater. The landfill was capped and seeded. The alternate option is to re-construct the leachate treatment ponds, and re-routing upgradient surface water runoffs to isolate the landfill from groundwater flow, but this would be done at a significant cost that cannot be estimated at this time. The Baker Brook Property is assessed at \$8,300;

- f) With respect to the Terrain-en-aiguilles Property, the Environmental Exposure that could be incurred is estimated to be \$500,000. The Environmental Exposure consists of potential contamination caused by the railroad-track that crosses the property. The Terrain-en-aiguilles Property is assessed at \$2,600;
- g) With respect to the Terrain-en-carré Property, the Environmental Exposure that could be incurred is estimated to be \$500,000. The Environmental Exposure results from petroleum handling activities on neighboring properties on each side of the property. The Terrain-en-carré Property is assessed at \$52,900;
- h) With respect to the Dryden Mercury Property, the Environmental Exposure that could be incurred is estimated to be \$250,000 for ongoing monitoring and maintenance. The site includes a former mercury landfill in which the mercury has been stabilized in a concrete mixture. The landfill is encapsulated and closed. There is a risk of impact to groundwater of the encapsulation was to somehow fail. The Dryden Mercury Property is assessed at \$31,500;
- i) With respect to the Highway 28 Property, the Environmental Exposure that could be incurred is estimated to be \$500,000. This cost is for the monitoring as well as the work to be performed in order to close the site. The Highway 28 Property is assessed at \$625,000;
- j) With respect to the Kenora Margach Landfill Property, the maximum Environmental Exposure that could be incurred is estimated to be \$4,000,000 for the capping and closure of the landfill as well as post closure groundwater monitoring for the next thirty (30) years. The Kenora Margach Landfill Property is assessed at \$242,000. On July 2, 2010, the Ontario Ministry of the Environment informed the Petitioners that following the inspection of the landfill on May 27, 2010, and the future closure of the site, the Petitioners would have to submit a closure plan and an application to amend the certificate of approval. The Petitioners had until August 2, 2010, to provide a written response indicating their commitment to full closure of the site and a timetable submission of a closure plan and an application to change the status of the site closed. The Petitioners have yet to provide the response requested by the Ministry; and

- k) With respect to the Kenora Mud Lake Landfill Property, the Environmental Exposure that could be incurred is estimated to be \$50,000 per year for long-term monitoring, collection and pumping equipment maintenance in connection with leachate discharge, resulting from the accumulation of wood residues that occurred prior to the filing of the CCAA proceedings. Also, the treatment cost at the town treatment plant that is currently set at approximately \$5,000 to \$7,000 per year. The Kenora Mud Lake Landfill Property is assessed at \$229,000.

16. Given their financial situation and the fact that the Non-Core Properties are not required for future operations, the Abitibi Petitioners submit that they should be authorized to transfer the Non-Core Properties in order to crystallize any potential former "owner/occupier" environmental liabilities associated therewith and to adequately deal with any claims resulting therefrom in the restructuring plan to be filed, without having to carry the Environmental Exposure upon emergence.
17. In any event, the Abitibi Petitioners submit that given the order of magnitude of the Environmental Exposure, the Non-Core Properties have little utility, if any.

The Sale of the Non-Core Properties

18. The Deeds of Sale and the Indentures contemplates the sale, on an *as is- where is* basis, of all vendors' rights, title and interest in and to the Non-Core Properties to the Purchaser. The Purchaser is a wholly owned indirect subsidiary of AbitibiBowater Inc. incorporated in 2009 under the CBCA in the context of the Abitibi Petitioners' aborted CBCA arrangement proceedings.
19. The purchase price for each of the Non-Core Properties will be satisfied by the issuance of a non-interest bearing promissory note (each a "Purchaser Note" and collectively the "Purchaser Notes"), draft copies of which are communicated herewith *en liasse* as Exhibit R-28, having the following features:
- a) amounts owing under the Purchaser Note shall be paid out of the actual net proceeds generated by the sale of the Non-Core Properties (or any portion thereof) to a third party by the Purchaser or any receiver appointed in respect thereof;
 - b) recourse for any principal owed under the Purchaser Note shall be limited to the Non-Core Properties (or the proceeds of sale thereof) and shall be subordinated to (i) the costs of complying with any orders issued in respect of the Non-Core Properties (or which may hereafter be issued in respect of any conditions existing as of the time of transfer) under the EPA; (ii) any costs which would have priority pursuant to section 11.8 of the CCAA or section 14.06(7) of the *Bankruptcy and Insolvency Act* ("BIA"); (iii) the costs of any receiver appointed in respect of the Purchaser or Purchaser's interest in the Non-Core Properties; and

- c) subject to the above-mentioned subordination, all amounts owed under the Purchaser Note are secured in favor of the vendors by (i) the GSAs; (ii) the Mortgages; and (iii) the Hypothecs (collectively the "Security").
20. As appears from Exhibit R-2 to R-12, the Vesting Orders sought provides for the vesting of title in the Non-Core Properties to take effect upon the issuance of the Vesting Orders and Amended Receivership Order.

Amendment to the Amended Receivership Order

- 21. [...]
 - 22. [...]
 - 23. [...]
 - 24. [...]
 - 25. [...]
26. As a result of the [...] transfer of the Non-Core Properties to the Purchaser, the Petitioners hereby seek [...] the following amendment [...] to the Amended Receivership Order:
- a) [...]
 - b) the increase of the limit of the amount that the Receiver is empowered to borrow by way of revolving credit from \$600,000 to \$1,700,000 given the transfer of the Non-Core Properties to the Purchaser. Such financing shall be used to cover for (i) estimated fees and disbursements of the replacement Receiver for an initial period of 12 months; and (ii) reasonable costs of conservation, environmental studies and any urgent, currently unforeseen, remediation work required to stabilize the Purchaser's properties (including the Non-Core Properties once transferred) while negotiations are undertaken for the remediation and disposition of such properties.
 - c) [...]
 - d) [...]

the whole as set forth in the draft Re-Amended Receivership Order communicated as Exhibit R-27.

V - TREATMENT OF ENVIRONMENTAL CLAIMS

27. Following the successful transfer of the Non-Core Properties to the Purchaser as contemplated in the Deeds of Sale and the Indentures the relevant environmental authorities will be notified of their potential claims as contemplated in the order

to be rendered by this Court on Petitioners' Motion for the Approval of a Process to Solicit, Review and Determine Applicable Claims and for the Establishment of a Second Claims Bar Date dated February 9, 2010 and will be invited to submit a proof of claim if they intend to do so.

28. The vendors are seeking the appointment of the Receiver in respect of the Non-core Properties to permit the continued safe custody of such properties while their future is being determined under court supervision. The Deeds of Sale and the Indentures have been structured such that vendors receive a return in respect of the Non-Core Properties if they are ultimately sold to a third party, only after any environmental and related obligations have been satisfied.
29. Once filed, these environmental claims will be assessed in the same manner as other claims and will rank as unsecured claims in the estate of the relevant Petitioner.
30. In addition, the holders of environmental claims will maintain their secured claims, if any, under Section 11.8(8) of the CCAA since Section 14.06(7) of the BIA will allow them to benefit from a similar security in the context of the receivership proceedings of Purchaser.
31. As a result, Petitioners submit that, duly proved environmental claims in respect of the Non-Core Properties will likely generate a higher dividend than in a bankruptcy liquidation as it is expected that the CCAA Proceedings should produce a superior outcome for all Petitioners' creditors than a bankruptcy process.
32. Petitioners submit that the sale of the Non-Core Properties is in the best interest of and will generally benefit to all of their stakeholders, in that, *inter alia*:
 - a) the sale of the Non-Core Properties forms part of Petitioners' continuing objective and strategy to implement a restructuring plan, which will allow them (or any successor thereof) to be profitable over time. Such plan will include the following previously announced measures: (a) disposing of non-strategic assets, (b) reducing indebtedness, and (c) reducing financial costs;
 - b) the Non-Core Properties are not required to continue the operations of Petitioners, and given the applicable legislative and regulatory context, if the Non-Core Properties are not disposed of prior to the implementation of a restructuring plan, Petitioners (or any successor thereof) may have to carry material liabilities relating to these non-strategic assets;
 - c) it is Petitioners' view that they can, in the context of CCAA Proceedings, compromise environmental claims resulting from the fact that Petitioners were former owners or occupiers of impacted properties. Such claims are historic liabilities and are the sort of liabilities which a debtor company is

able to shed in order to emerge from the CCAA Proceedings and resume its business with a fresh start;

- d) the sale of the Non-Core Properties or the transfer thereof to the Purchaser will crystallize claims in respect of "former owner/occupier" environmental liabilities, which will be compromised in these CCAA Proceedings;
- e) the sale of the Non-Core Properties is an important component of Petitioners' attempt to successfully restructure their business as it will allow environmental liabilities with respect to the Non-Core Properties to be dealt with in the restructuring plan to be filed by Petitioners;
- f) environmental stakeholders will be fully protected as they shall receive all of the protection offered such claims in liquidation plus the additional benefit of the value attributed to any proven claim as part of the restructuring plan.

33. Petitioners respectfully submit that this Motion should be granted in accordance with its conclusions.

WHEREFORE, MAY THIS COURT:

- [1] GRANT this Amended Second Motion for the Issuance of an Order Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada Inc. (the "Motion").
- [2] EXEMPT, if applicable, Petitioners from having to serve the Motion and from any notice or delay of presentation.
- [3] ISSUE orders substantially in the form of the draft orders communicated as Exhibits R-2 to R-12 and 27 in support of the Motion;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, August 4, 2010

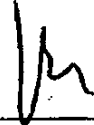

STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, Bruce Robertson, having my principal place of business at 39, Winford Dr., Toronto, Ontario, M3C 3K5, solemnly declare the following:

1. I am the Chief Restructuring Officer of AbitibiBowater Inc.;
2. All the facts alleged in the Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada Inc. are true.

AND I HAVE SIGNED



BRUCE ROBERTSON

Solemnly declared before me at Montreal
on the 4th day of August 2010



Commissioner for oaths



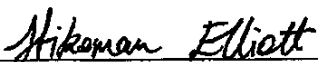
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Amended Second Motion for the Issuance of Various Orders Authorizing the Sale of Non-Core Properties and for the Issuance of a Re-Amended Receivership Order in respect of 4513541 Canada Inc.* will be presented for adjudication before the Honourable Judge Clément Gascon of the Superior Court, sitting in commercial division in and for the District of Montréal, in Room 16.12 of the Montréal Courthouse, 1 Notre-Dame Street East, on Wednesday September 1st, 2010 at 9:00 AM.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, August 4, 2010


STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

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:

ABITIBOWATER INC. & al
Petitioners

- and -
ERNST & YOUNG INC.
Monitor

- and -
THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF
SAGUENAY & al

Respondents

BS0350 n/dos.: 041053-1170

AMENDED SECOND MOTION FOR THE
ISSUANCE OF VARIOUS ORDERS AUTHORIZING
THE SALE OF NON-CORE PROPERTIES AND FOR
THE ISSUANCE OF A RE-AMENDED
RECEIVERSHIP ORDER IN RESPECT OF
4513541 CANADA INC.

ORIGINAL

Me Guillaume Boudreau-Simard (514) 397-3694
Fax : (514) 397-3621

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

This is Exhibit J referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30
day of AUGUST 20 10

DK KN CS 250 + 610

Ministry of the
Environment

Ministère de
l'Environnement



2 St. Clair Avenue West
Floor 12A
Toronto, ON M4V 1L5

2, avenue St. Clair Ouest
Étage 12A
Toronto, ON M4V 1L5

Environmental Assessment and Approvals Branch (EAAB)

Tel: (416) 314-8316
Fax: (416) 314-8452

September 9, 2004

Mr. Derrick Lindgren
General Manager
Abitibi-Consolidated Company of Canada
P.O. Box 5000, 504 Ninth Street North
Kenora, Ontario P9N 3Y1

Dear Mr. Lindgren:

RE: MUD LAKE WASTE DISPOSAL SITE
CERTIFICATE OF APPROVAL (CofA) NO. A600605

Attached is an amended CofA for the Mud Lake Wood Waste Disposal Site. This amendment approves the closure and post-closure monitoring activities for the wood waste landfill.

Should you have any questions regarding this matter, please call me at (416) 314-8316.

Sincerely,

Veronica Pochmursky

Veronica Pochmursky
Waste Evaluator
Waste Unit

Thunder Bay ✓

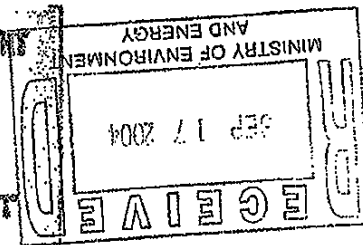
c: District Manager - MOE Kenora Office
Brian Houle, Abitibi-Consolidated Company of Canada

Area Supervisor MOE Kenora

MINISTRY OF ENVIRONMENT

SEP 20 2004

KENORA DISTRICT





Ministry of the Environment
Ministère de l'Environnement

AMENDED PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER A600605

Abitibi-Consolidated Company of Canada
P.O. Box 5000, 504 Ninth Street North
Kenora, Ontario P9N 3Y1

Site Location: Mud Lake Waste Disposal Site
Abitibi-Consolidated Company of Canada
Mellick Avenue (Barsky's Hill)
Kenora, Ontario
Zone 15, 393278 E, 5515387 N, NAD83, +/- 6m, G.P.S..

You have applied in accordance with Section 27 of the Environmental Protection Act for approval of:

the closure and post-closure maintenance, monitoring, inspecting and reporting of a 7.41 hectare (18.3 acre) Waste Disposal Site (Landfill).

For the purpose of this Certificate of Approval and the terms and conditions specified below, the following definitions apply:

- (a) "Act" means the *Environmental Protection Act*, R.S.O. 1990, C.E-19, as amended;
- (b) "Certificate" means this Provisional Certificate of Approval;
- (c) "Company" means Abitibi-Consolidated Company of Canada;
- (d) "Director" means Director, Environmental Assessment and Approvals Branch, Ontario Ministry of the Environment;
- (e) "District Manager" means District Manager, Thunder Bay/Kenora District Office, Ontario Ministry of the Environment;
- (f) "Ministry" and "MOE" means the Ontario Ministry of the Environment;
- (g) "ODWQS" means the Ontario Drinking Water Quality Standards;
- (h) "PWQO" means the Provincial Water Quality Objectives included in the July 1994 publication entitled *Water Management Policies, Guidelines, Provincial Water Quality Objectives*;

- (i) "RUP" means the Reasonable Use Policy (Guideline B-7) of the Ministry of the Environment; and
- (j) "Site" means the property located off Mellick Avenue on Barsky's Hill, in the City of Kenora, at Zone 15, 393278 E, 5515387 N, NAD83, +/- 6m, G.P.S.

You are hereby notified that this approval is issued to you subject to the terms and conditions outlined below:

TERMS AND CONDITIONS

General

1. This Provisional Certificate of Approval supersedes and replaces Provisional Certificate Number A600605 issued March 11, 1982 as amended April 14, 1998.
2. The requirements specified in this Certificate are requirements under the Act. Issuance of this Certificate in no way abrogates the Company's legal obligations to take all reasonable steps to avoid violating other applicable provisions of this legislation and other legislation and regulations.
3. The requirements of this Certificate are severable. If any requirements of this Certificate, or the application of any requirement of this Certificate to any circumstance, is held invalid, the application of such requirement to other circumstances and the remainder of this Certificate shall not be affected in any way.
4. (a) The Company shall, forthwith upon request of the Director, District Manager, or Provincial Officer (as defined in the Act), furnish any information requested by such persons with respect to compliance with this Certificate, including but not limited to, any records required to be kept under this Certificate; and
(b) In the event the Company provides the Ministry with information, records, documentation or notification in accordance with this Certificate (for the purposes of this condition referred to as "Information"),
 - (i) the receipt of Information by the Ministry;
 - (ii) the acceptance by the Ministry of the Information's completeness or accuracy; or
 - (iii) the failure of the Ministry to prosecute the Company, or to require the Company to take any action, under this Certificate or any statute or regulation in relation to the Information;shall not be construed as an approval, excuse or justification by the Ministry of any act or omission of the Company relating to the Information, amounting to non-compliance with this Certificate or any statute or regulation.

5. The Company shall allow Ministry personnel, or a Ministry authorized representative(s), upon presentation of credentials, to;
 - (a) carry out any and all inspections authorized by Section 156, 157 or 158 of the Act, Section 15, 16 or 17 of the **Ontario Water Resources Act**, R.S.O. 1990, or Section 19 or 20 of the **Pesticides Act**, R.S.O. 1990, of any place to which this Certificate relates; and,
 - (b) without restricting the generality of the foregoing, to:
 - (i) enter upon the premises where records required by the conditions of this Certificate are kept;
 - (ii) have access to and copy, at reasonable times, any records required by the conditions of this Certificate;
 - (iii) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations required by the conditions of this Certificate; and
 - (iv) sample and monitor at reasonable times for the purposes of assuring compliance with the conditions of this Certificate.
6. Where there is a conflict between a provision of any document referred to in Schedule "A", and the conditions of this Certificate, the conditions in this Certificate shall take precedence. Where there is a conflict between the documents listed in Schedule "A", the document bearing the most recent date shall prevail.
7. Any information relating to this Certificate and contained in Ministry files may be made available to the public in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. F-31.
8. All records and monitoring data required by the conditions of this Certificate must be kept on the Company's premises for a minimum period of five (5) years from the date of their creation.

Certificate of Prohibition

9. Pursuant to Section 197 of the Act, no person having an interest in the Site shall deal in any way with the Site without first giving a copy of this Certificate to each person acquiring an interest in the Site as a result of the dealing.
10.
 - (a) Two copies of a completed Certificate of Prohibition, containing a registerable description of the Site, shall be submitted to the Director for the Director's signature within 60 calendar days of the date of this Certificate; and
 - (b) The Certificate of Prohibition shall be registered in the appropriate land registry office on title to the Site by the Company within 10 calendar days of receiving the Certificate of Prohibition signed by the Director, and a duplicate registered copy shall be submitted to the Director.

Landfill Closure

11. The Site shall be closed, maintained, monitored, inspected and reported by the Company in accordance with Item 2 of Schedule "A".
12. (a) On an annual basis at a minimum, the Company shall carry out the following inspection regime:
 - (i) inspect the final cover integrity;
 - (ii) inspect the vegetative cover;
 - (iii) inspect for leachate seeps;
 - (iv) inspect for slope erosion;
 - (v) inspect for other nuisance factors (litter, rodents, bears);
 - (vi) inspect perimeter ditches for obstruction or damage.
- (b) Any deficiencies noted during the inspection shall be remediated within thirty (30) days, weather permitting.

Surface Water Management

13. The Company shall maintain site grading and final contours such that all surface water runoff from the landfilling area is directed north to the perimeter ditching to minimize infiltration into the landfill.

Surface Water Monitoring

14. (a) Surface water monitoring shall be conducted by the Company in accordance with Schedule "B".
- (b) The surface water monitoring program may be amended from time to time subject to the District Manager's written approval.

Groundwater Monitoring

15. (a) Groundwater monitoring shall be conducted by the Company in accordance with Schedule "C".
- (b) The groundwater monitoring program may be amended from time to time subject to the District Manager's written approval.

Contingency Plan

16. In the event that surface runoff exceeds leachate collection system/culvert capacity, the Company shall:
- (a) maintain water quality monitoring and visual inspections;
 - (b) maintain culvert outlet discharge plus leachate collection discharge;
 - (c) close sluice gate and route runoff via the leachate collection system to a municipal treatment plant if water quality concerns develop;
 - (c) re-evaluate the closure performance, as appropriate, including:
 - (i) condition of closure geometry/clay cover effectiveness, scouring/erosion;
 - (ii) effectiveness of leachate collection/pumping system;
 - (iii) overall system performance;
 - (iv) need for routing runoff to the municipal treatment system.

Financial Assurance

17. (a) Within thirty (30) days of issuance of this Certificate, the Company shall submit to the Director, Financial Assurance as defined in Section 131 of the Act, in the amount of two hundred thousand and fifty-eight, seven hundred and forty-eight dollars (\$258,748). This Financial Assurance shall be in a form acceptable to the Director and shall provide sufficient funds for the post closure inspection maintenance and monitoring of the Site;
- (b) The Company shall provide to the Director every three to five years, a re-evaluation of the amount of the Financial Assurance to facilitate the actions required under Condition 17 (a). The Financial Assurance must be submitted to the Director within ten (10) days of written acceptance of the re-evaluation by the Director; and
- (c) The amount of Financial Assurance is subject to review at any time by the Director and may be amended at his/her discretion. If any Financial Assurance is scheduled to expire or notice is received, indicating Financial Assurance will not be renewed, and satisfactory methods have not been made to replace the Financial Assurance at least sixty (60) days before the Financial Assurance terminates, the Company shall forthwith replace the Financial Assurance with cash.

Reporting

18. By March 31, 2005, and on an annual basis thereafter, the Company shall prepare and submit to the District Manager, an annual monitoring report. The report shall include the following as a minimum:
- (a) a drawing(s) of the Site indicating all surface water monitoring locations;
 - (b) tables outlining monitoring locations, analytical parameters sampled, frequency of sampling and measurements;
 - (c) an analysis and interpretation of the surface water monitoring data;
 - (d) an assessment of surface water quality in respect to the PWQO;

- (e) a review of the adequacy of the monitoring program and recommendations for any changes in the monitoring program;
- (f) a summary of inspections; and
- (g) a summary of complaints made regarding Site maintenance and the Company's response and action taken.

SCHEDULE "A"

This Schedule "A" forms part of Certificate of Approval No: A600605 and contains documentation submitted in support of an application for the Site closure, post-closure, maintenance, inspecting, monitoring and reporting.

1. Application for a Provisional Certificate of Approval for a Waste Disposal Site, signed by Mr. Derrick Lindgren, dated January 20, 2004.
2. Supporting document titled "ACCC, Kenora, Mud Lake Landfill Closure Plan, Design Report" prepared by KGS Group, dated July 2003.

SCHEDULE "B"

This Schedule "B" forms part of Certificate of Approval No: A600605.

Surface Water Monitoring Program

Monitoring Location	No. of Samples per year	Parameter s Spring April - May	Parameters Summer June - August	Parameters Fall Sept - Nov
Landfill SML-1, SML-2	3	Set A, C	Set A, C, D	Set A, C
Background SML-3	3	Set A, C	Set A, C, D	Set A, C
Special Studies SML-1, SML-2	6 (monthly)	Set A, B	Set A, B	Set A, B
SML-1, SML-2, SML-3	1		Resin and Fatty Acids	

Parameter List

Set A (Field)	Set B (Lab)	Set C (Lab)	Set D (Lab)
pH conductivity temperature dissolved oxygen flow	pH conductivity	ammonia pH conductivity total dissolved solids alkalinity hardness chloride sodium sulphate total kjeldahl nitrogen total phosphorous phenols BOD ₅	arsenic cadmium calcium chromium III chromium IV V cobalt copper lead magnesium nickel potassium ammonia nitrate plus nitrite COD total organic carbon tannin & lignin aluminium barium iron (Fe ³⁺) Total Iron manganese zinc

Notes:

- Monitoring stations: SML-1- culvert discharge offsite to Rabbit Lake outlet
SML-2 - leachate pumping station
SML-3 - background surface water at northwest pond

- If at any time of sampling, there is no flow from SML-1, the operator must return to the site when there is precipitation to ensure that the required monthly sample is collected.

SCHEDULE "C"

This Schedule "C" forms part of Certificate of Approval No: A600605.

Groundwater Monitoring Program

Monitoring Location	No. of Samples per year	Parameters Spring April - May	Parameters Summer June - August	Parameters Fall Sept - Nov
Well One	3	Set A, B	Set A, B, C	Set A, B
Well One	1		Resin and Fatty Acids	

Parameter List

Set A (Field)	Set B (Lab)	Set C (Lab)
pH conductivity static level	ammonia pH conductivity total dissolved solids alkalinity hardness chloride sodium sulphate total kjeldahl nitrogen total phosphorous phenols BOD ₅	arsenic cadmium calcium chromium III chromium IV V cobalt copper lead magnesium nickel potassium ammonia nitrate plus nitrite COD total organic carbon tannin & lignin aluminium barium iron (Fe ³⁺) <i>Total Iron Aug 1/01</i> manganese zinc

The reasons for the imposition of these terms and conditions are as follows:

The reason for Condition 1 is to clarify that the previously issued Certificate of Approval No. A600605 issued on March 11, 1982, as amended on April 14, 1998, is no longer in effect and has been replaced and superseded by the Terms and Conditions stated in this Certificate.

The reason for Conditions 2, 3, 6, 7, 8 and 18 is to clarify the legal responsibilities and obligations imposed by this Provisional Certificate of Approval.

The reason for Conditions 4 and 5 is to ensure that appropriate Ministry staff have ready access to the Site in order to confirm that the Site is being operated according to this Certificate. The condition is supplementary to the powers afforded a Provincial Officer pursuant to the Act, the Ontario Water Resources Act, and the Pesticides Act.

The reason for Conditions 9 and 10 is that Section 46 of the Environmental Protection Act prohibits any use being made of the lands after they cease to be used for waste disposal purposes within a period of twenty-five years from the year in which such land ceased to be used unless the approval of the Minister for the proposed use has been given. The purpose of this prohibition is to protect future occupants of the site and the environment from any hazards which might occur as a result of waste being disposed of on the site. This prohibition and potential hazard should be drawn to the attention of future owners and occupants by the Certificate being registered on title.

The reason for Condition 11 is to ensure that the Site shall be closed, maintained, monitored, inspected and reported on in accordance with the application submitted by the Company, and not in a manner which the Director has not been asked to consider.

The reason for Condition 12 is to specify the frequency of the final cover integrity inspections.

The reason for Condition 13 is to ensure that the Company shall maintain Site grading and final contours such that all surface water runoff from the landfilling area is directed to perimeter ditches.

The reason for Conditions 14 and 15 is to ensure the Company monitors surface water and groundwater quality in a manner which is satisfactory to the Ministry.

The reason for Condition 16 is to ensure the Company takes effective action to maintain water quality in the event of an unusual storm event.

The reason for Condition 17 is to ensure that sufficient funds are available to the Ministry to conduct the long term monitoring of the Site in the event that the Company is unable or unwilling to do so.

This Provisional Certificate of Approval revokes and replaces Certificate(s) of Approval No. A600605 issued on March 11, 1982, as amended on April 14, 1998.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written notice served upon me and the Environmental Review Tribunal within 15 days after receipt of this Notice, require a hearing by the Tribunal. Section 142 of the Environmental Protection Act provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Review Tribunal
2300 Yonge St., 12th Floor
P.O. Box 2382
Toronto, Ontario
M4P 1E4

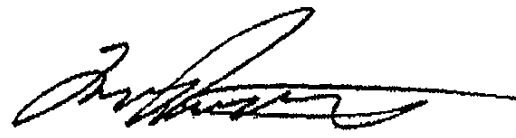
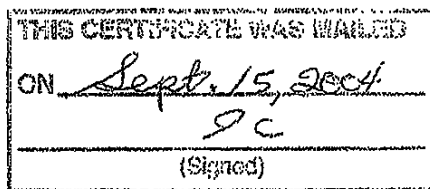
AND

The Director
Section 39, Environmental Protection Act
Ministry of the Environment and Energy
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5

* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 8th day of September, 2004



Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

VP/
c: District Manager, MOE ~~Kenora~~ Thunder Bay ✓
Brian Houle, Abitibi-Consolidated Company of Canada
Area Supervisor MOE Kenora

This is Exhibit K referred to in the
affidavit of John TAYLOR
sworn before me, this 30th
day of AUGUST 2010

[Signature]
A COMMISSIONER, ETC.

MUD LAKE LANDFILL

Ministry of the Environment
Environmental Assessment and
Approvals Branch
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416) 314-8452
Telephone: (416) 314-8225

Ministère de l'Environnement
Direction des évaluations et des
autorisations environnementales
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécoeur : (416) 314-8452
Téléphone: (416) 314-8225



October 4, 2004

Brian Houle
Abitibi-Consolidated Company of Canada
P.O. Box 5000, 504 Ninth Street North
Kenora, Ontario
P9N 3Y1

RECEIVED

OCT 06 2004

Business and Fiscal
Planning Branch

Dear Sir/Madam:

**Re: Financial Assurance for Certificate of Approval : Waste Disposal Sites No. A600605
Compliance With Condition No. 17, Submission of Financial Assurance**

We acknowledge receipt of AMD001, dated October 1, 2004, amending Canadian Imperial Bank of Commerce Letter of Credit No. SBGM732131 to incorporate the changes requested in our letter dated September 3, 2004. This amendment will be forwarded to our Business and Fiscal Planning Branch for safekeeping.

If you have any questions regarding the above, please contact Brad Ross at the above phone number.

Yours truly,

[Signature]

Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

c: District Manager, MOE Thunder Bay District Office
Area Supervisor, Kenora Area Office
Richard Brown, MOE, Business and Fiscal Planning Branch

Lucie Ladeluca, Abitibi Consolidated Inc., Montreal
Teresa Sarte, Canadian Imperial Bank of Commerce, Toronto



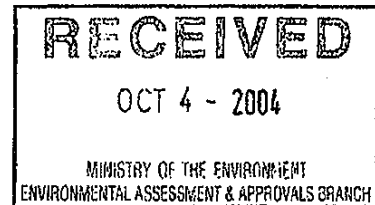
Trade Finance Centre

By UPS Courier

01 October 2004

To: Ministry of Environment
Environment Assessment and Approvals Branch
Floor 12A
2 St. Clair Ave West
Toronto, Ontario
M4V 1L5

Attn: Brad Ross (tel 416-314-8225)



Re: Letter of credit No: SBGM732131
Applicant Abitibi Consolidated Inc.
1155 Metcalfe Street, Suite 800
Montreal, Quebec

Dear Sir:

We enclose herewith the original amendment to the above referenced Standby Letter of Credit. This amendment is processed in accordance with your letter dated September 3, 2004.

For any inquiries, please contact our office Hue Quoc Tang @ (514) 876-4766.

Please direct your correspondence to CIBC, 1155 Rene Levesque Blvd. West, 12th Floor, Montreal, Quebec H3B 3Z4 Attn: **Standby Letters Of Credit** quoting our reference.

Cc:
Abitibi Consolidated Inc.
1155 Metcalfe Street, Suite 800
Montreal, Quebec

H3B 5H2
Attn: Lucie Iadaluca (fax: 394-2267)

C.I.B.C. Transit 8612 - Corporate Client Support Centre
Commerce Court West, 50th Floor
Toronto, Ont. M5L 1A2
Attn: Teresa Sarte (fax : 416-980-5855)



Trade Finance Centre
1 October 2004

5621348
2106C BIL-0309

Place and date of issue *Lieu et date d'émission*

Letter of Credit Reference No.

SBGM732131

Amendment No.

AMD001

Beneficiary:

Ministry of Environment and Energy
40 St. Clair Ave West, 9th Floor
Toronto, Ontario
M4V 1M2

Applicant:

Abitibi Consolidated Inc.
1155 Metcalfe Street, Suite 800
Montreal, Quebec
H3B 5H2

This letter of credit has been amended as follows:

1- Beneficiary's name and address have been corrected to read:

Her Majesty the Queen in right of
Ontario as represented by the
Minister of Environment, 2 St Clair
Ave. West, Toronto, ON M4V 1L5

2- Applicant's name and address corrected to read:

Abitibi-Consolidated Company of
Canada
1155 Metcalfe Street, Suite 800
Montreal, Quebec H3B 5H2

3 - In paragraph no.8, the words reading "Certificate of Approval Number 600606" have been deleted and replaced by "Certificate of Approval Number A600605" (Mud Lake)."

All other terms and conditions of this credit remain unchanged.

This amendment is to be considered as part of the above credit and must be attached thereto.

For Canadian Imperial Bank of Commerce

Counter Signature

 T-1249

Q. H. TANG

Authorized Signature


NANCY SCURALLI

Done
14/9/04

Ministry of the Environment
Environmental Assessment and
Approvals Branch
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416)314-8452
Telephone: (416) 314-8225

Ministère de l'Environnement
Direction des évaluations et des
autorisations environnementales
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécopieur : (416)314-8452
Téléphone: (416) 314-8225



September 3, 2004

Brian Houle
Abitibi-Consolidated Company of Canada
P.O. Box 5000, 504 Ninth Street North
Kenora, Ontario
P9N 3Y1

RECEIVED

SEP 14 2004
08

Business and Fiscal
Planning Branch

Dear Sir/Madam:

**Re: Financial Assurance for Certificate of Approval : Waste Disposal Sites No. A600605
Compliance With Condition No. 17, Submission of Financial Assurance**

We acknowledge receipt of Letter of Credit No. SBGM732131, dated August 26, 2004, for CAD\$258,748.00, issued by the Canadian Imperial Bank of Commerce, pursuant to Condition No. 17 of Provisional Certificate of Approval for a Waste Disposal Site No. A600605. This Financial Assurance is acceptable to the Director under Section 39 of the Environmental Protection Act and will be forwarded to our Business and Fiscal Planning Branch for safekeeping.

We have reviewed the above Letter of Credit and note that in paragraph (8), on page (1), the last line should read "... in connection with Provisional Certificate of Approval Number A600605" and not A600606 as mentioned. Please request the Canadian Imperial Bank of Commerce to issue an amendment accordingly.

Please disregard our earlier acknowledgement letter, dated August 30, 2004 (copy attached), on this subject.

If you have any questions regarding the above, please contact Brad Ross at the above phone number.

Yours truly,



Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

c: District Manager, MOE Thunder Bay District Office
Area Supervisor, MOE Kenora Area Office
Veronica Pochmursky, MOE, Environmental Assessment and Approvals Branch
Richard Brown, MOE, Business and Fiscal Planning Branch
Catherine Levis, Manager - Environment, Abitibi-Consolidated,
1155 Metcalfe Street, Suite #800
Montreal, Quebec
H3B 5H2

Ministry of the Environment
Environmental Assessment and
Approvals Branch
Floor 12A
2 St Clair Ave W
Toronto ON M4V 1L5
Fax: (416) 314-8452
Telephone: (416) 314-8225

Ministère de l'Environnement
Direction des évaluations et des
autorisations environnementales
Étage 12A
2 av St Clair O
Toronto ON M4V 1L5
Télécopieur : (416) 314-8452
Téléphone: (416) 314-8225



Previously received

August 30, 2004

Douglas D. Raoul, Environmental Superintendent
Abitibi-Consolidated Company of Canada
504 Ninth Street North, P.O. Box 5000
Kenora, Ontario
P9N 3Y1

RECEIVED

SEP 02 2004

Business and Fiscal
Planning Branch

Dear Sir/Madam:

**Re: Financial Assurance for Certificate of Approval : Waste Disposal Sites No. A600606
Compliance With Condition No. 5, Submission of Financial Assurance**

We acknowledge receipt of Letter of Credit No. SBGM732131, dated August 26, 2004, for CAD\$258,748.00, issued by the Canadian Imperial Bank of Commerce, pursuant to Condition No. 5 of Provisional Certificate of Approval for a Waste Disposal Site No. A600606. This Financial Assurance is acceptable to the Director under Section 39 of the Environmental Protection Act and will be forwarded to our Business and Fiscal Planning Branch for safekeeping.

If you have any questions regarding the above, please contact Brad Ross at the above phone number.

Yours truly,

PE2 Ian Parrott, P.Eng.
Director
Section 39, Environmental Protection Act

c: District Manager, MOE Thunder Bay District Office

Area Supervisor, MOE Kenora Area Office
Richard Brown, MOE, Business and Fiscal Planning Branch
Catherine Levis, Manager - Environment, Abitibi-Consolidated,
1155 Metcalfe Street, Suite #800
Montreal, Quebec
H3B 5H2

500 1. km



Aug 30

48152

Trade Finance Centre

26 August 2004

BY UPS COURIER

To: Ministry of Environment and Energy
40 St. Clair Ave West, 9th Floor
Toronto, Ontario
M4V 1M2

Attention: Richard C. Brown

Re: Our reference: SBGM732131
Applicant: Abitibi Consolidated Inc.

RECEIVED

AUG 27 2004

Business and Fiscal
Planning Branch

Dear Mr. Brown,

Please find enclosed the original above-mentioned standby letter of credit.

For any inquiries, please contact our office Claudine Jeannotte @ (514) 876-2051.

Please direct your correspondence to CIBC, Trade Finance Centre, 1155 Rene Levesque Blvd. West, 12th Floor, Montreal, Quebec H3B 3Z4 Attn: **Standby Letters of Credit** quoting our reference.

Abitibi



Trade Finance Centre

26 August 2004

Place and date of issue / Lieu et date d'émission

5621348
2106C 61L-0309

Letter of Credit Reference No. SBGM732131

Beneficiary:

Ministry of Environment and Energy
40 St. Clair Ave West, 9th Floor
Toronto, Ontario
M4V 1M2

Applicant:

Abitibi Consolidated Inc.
1155 Metcalfe Street, Suite 800
Montreal, Quebec
H3B 5H2

Amount: CAD 258,748.00

Two Hundred and Fifty Eight Thousand Seven
Hundred and Forty Eight Canadian Dollars

Date of Expiry: 29 December 2004

We hereby authorize you to draw on Canadian Imperial Bank of Commerce, Trade Finance Centre, Atrium-on-Bay, 595 Bay Street, 7th Floor, Toronto, Ontario M5G 2M8 (CIBC) for account of Abitibi Consolidated Inc., 1155 Metcalfe Street, Montreal, Quebec H3B 5H2 (the "applicant") up to an aggregate amount of Two Hundred and Fifty Eight Thousand Seven Hundred and Forty Eight Dollars of lawful money of Canada available by demand or drafts at sight.

Pursuant to the request of the applicant, we Canadian Imperial Bank of Commerce, Trade Finance Centre, Montreal, Quebec hereby establish and give to you an irrevocable standby letter of credit in your favour which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without enquiring whether you have a right as between yourselves and the said applicant to make such demand and without recognizing any claim of the said applicant.

This irrevocable standby letter of credit will continue up to the 29th day of December 2004 and will be automatically renewed for one year on the same terms and conditions including this one for renewal unless we give you at least sixty (60) days written notice that it will not be so renewed and you may call for payment on the full amount outstanding under this irrevocable letter of credit at any time prior to that date should this irrevocable letter of credit not be renewed.

Partial drawings are permitted.

Any bill or payment made hereunder shall be in favour of the Minister of Finance of Ontario.

The amount secured by this irrevocable standby letter of credit may be reduced from time to time by written notice to us from you.

Any notice under the previous paragraph or any demand hereunder may be made by you or the Assistant Deputy Minister, Regional Operations Division; the Assistant Deputy Minister, Corporate Management Division; or such other Director as you from time to time authorize in writing to us.

Your claim under this irrevocable standby letter of credit must be in writing addressed to Canadian Imperial Bank of Commerce, Trade Finance Centre, Atrium-on-Bay, 595 Bay Street, 7th Floor, Toronto, Ontario M5G 2M8, quoting our irrevocable letter of credit number SBGM732131 dated August 26, 2004 and shall be accompanied by a written statement that the monies are required in connection with Provisional Certificate of Approval Number 600606.

We hereby agree with you that demand(s) made or bills drawn in compliance with the terms of this letter of credit shall be duly honoured upon presentation at Canadian Imperial Bank of Commerce, Trade Finance Centre, Atrium-on-Bay, 595 Bay Street, 7th Floor, Toronto, Ontario M5G 2M8.



Trade Finance Centre

26 August 2004

Place and date of issue Lieu et date d'émission

5621348
2106C BIL-0309

This Page forms an integral part of our Letter of Credit No. SBGM732131.

This standby letter of credit may be cancelled prior to the expiry date upon our receipt at the above-noted address of the original standby letter of credit and the Beneficiary's signed letter addressed to us requesting cancellation of the standby letter of credit. Such cancellation shall be effective on the date we receive the documents noted herein.

This standby letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce, Publication no. 500" and agrees us in accordance with the terms thereof.

For Canadian Imperial Bank of Commerce

C. JEANNOTTE
Counter Signature

C. Jeannotte 5678

Authorized Signature

Lucy Scuralli 5748
LUCY SCURALLI

FAX COVER SHEET

BUSINESS AND FISCAL PLANNING BRANCH

Ministry of the Environment
40 St. Clair Avenue West
Toronto, Ontario
M4V 1M2
Fax: 416-314-5738

Date: Aug 30/01

To Fax No: 4-8452

Attention: Brad Ross

Company: EAA B

From: _____

Number of Pages (including cover): 4

Comments: # SBGM T32131
LC for Abitibi, issued by
CIBC is attached. It was
Sent here directly. Please instruct.

MB

If you do not receive the number of pages specified,
or if you have trouble reading the copy,
please call 416-212-4798 for assistance.

This is Exhibit 'L' referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 20 10
Manafis
A COMMISSIONER, ETC.



Ministry
of the
Environment

SEP 12 1980
THUNDER BAY REGIONAL
OFFICE

Provisional Certificate No. A 7145502

PROVISIONAL CERTIFICATE OF APPROVAL WASTE DISPOSAL SITE

Under The Environmental Protection Act, 1971 and the regulations and subject to the limitations thereof, this Provisional Certificate of Approval is issued to:

Great Lakes Forest Products Limited
Dryden Operation
Chemical Division
Dryden, Ontario

for the use and operation of a 4.4 hectare landfill site

all in accordance with the following plans and specifications: the plan entitled "Plot plan of Sludge Disposal Area", Dryden Paper Co. Ltd., Drawing No. 6410; site plan and cross section entitled "Detail Waste Disposal Burial Site (D.C. Ltd.)", Dryden Paper Co. Ltd., dated September 15, 1971.

Located:

Parcel 27713, Part of the south part of Lot 7,
Concession 6,
Township of Van Horne, District of Kenora

which includes the use of the site only for the disposal of the following categories of waste (NOTE: Use of the site for additional categories of wastes requires a new application and amendments to the Provisional Certificate of Approval) 100% solid industrial wastes limited to mercury contaminated solid waste from the company's mill in Dryden.

and subject to the following conditions:

1. That the company's groundwater monitoring program at the site be maintained, and that the test results continue to be submitted to this Ministry's District OFFICE in Kenora.

THIS IS A TRUE COPY OF THE
ORIGINAL CERTIFICATE MAILED

FEB 6 1980

ON

Dms
Signed

Dated this 28th day of January, 1980

J.P. Cadore
Director, Section 33,
The Environmental Protection Act 1971

TO: Great Lakes Forest Products Limited
Dryden Operation
Chemical Division
Dryden, Ontario

You are hereby notified that Provisional Certificate of Approval No. A 7145502 has been issued to you subject to the conditions outlined therein.

The reasons for the imposition of these conditions are as follows:

1. To provide surveillance of potential leachate migration and thereby ensure the quality of the groundwater.

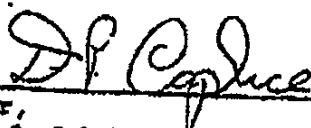
You may by written notice served upon me and the Environmental Appeal Board within 15 days after receipt of this Notice, require a hearing by the Board.

This Notice should be served upon:

The Secretary,
Environmental Appeal Board, AND
1 St. Clair Ave. West,
5th Floor,
Toronto, Ontario.
M4V 1K7

The Director,
Section 3a E.P.A.
Ministry of the Environment,

DATED at Toronto this 28th day of January , 1980 .


Director,
Section 3a E.P.A.

SEP 29 1980

This is Exhibit _____ referred to in the
affidavit of _____
sworn before me, this _____
day of _____ 20 _____

DK VA CG 610

True Grit Consulting Ltd.
1127 Barton Street
Thunder Bay, ON P7B 5N3
T 807.626.5640 F 807.623.5690 www.tgcl.ca

A COMMISSIONER, ETC.



February 19, 2009

Project No.07-020-02

VIA EMAIL (carolyn.simpson@ontario.ca)

Ms. Carolyn Simpson
Senior Environmental Officer
Kenora Area Office
808 Robertson Street, 2nd Floor
P.O. Box 5150
Kenora Bay, ON P9N 3X9

Dear Ms. Simpson:

Re: Response to MOE Letter dated January 15, 2009
Dryden Mercury Disposal Site, Dryden, Ontario

On behalf of AbitibiBowater Inc., True Grit Consulting Ltd. (TGCL) would like to provide our response to a letter prepared by the Ontario Ministry of the Environment (MOE) entitled *2005/2006 Monitoring Report, Bowater Closed Mercury Disposal Site, Dryden, Ontario, C. of A. #A7145502*, dated January 15, 2009 (attached).

Mr. Alisdair Brown, P.Eng., P.Geo., Regional Hydrogeologist with the MOE Northern Region Technical Support Section completed a review of the 2005 and 2006 annual reports completed by Wardrop Engineering Inc. Below is a summary of comments and recommendations provided by Mr. Brown based on these reports.

- The key source wells, MW3 and MW4, where elevated mercury concentrations have been detected are screened at less than 4 m below ground surface and are monitoring the shallow groundwater regime. It is therefore likely that the trigger well MW9 is not monitoring the same groundwater regime where impact has been confirmed in the source wells. I therefore recommended that a new shallow monitoring well (screened above 4 m) is required in the vicinity of MW9. The new well would be used as a trigger well in addition to MW1 and MW9 and assessed in accordance with the trigger program for the site.
- Currently, surface water monitoring at the site is limited to the collection of a sample from the ditch located along the west and south sides of the site, which is located on the upgradient side of the fill area. I recommend that a second surface water sample should be collected (at the same frequency as all other sampling) from the ditch (rip rap ditch) located along the east side of the fill area, which is directly downgradient of the fill area.
- Reporting frequency at this site has been reduced to every two years at the MOE's initiative. It is my recommendation that this frequency can be continued. However, it is anticipated that if mercury impacts are measured which would trigger the contingencies, the proponent would notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken.

Based on our review of the MOE's comments and associated recommendations, TGCL concurs with the MOE's recommendation to install a new shallow trigger well (screened above 4 m) in the vicinity of MW9 to assess water quality at the site. TGCL recommends installing the new well during the spring (June) 2009 monitoring event and collecting water samples for analysis and inclusion in the 2009 annual report.

Ms. Carolyn Simpson
Project No. 07-020-02
February 19, 2009



TGCL also concurs with the MOE's recommendation to include an additional surface water sample location downgradient of source wells MW3 and MW4 along the east side of the fill area to assess water quality potential discharging from the site. Surface water sampling at this new location will commence in 2009 and the results included in the annual report.

The sampling frequency and analytical program for these new groundwater and surface sample locations will be consistent with the current approved program for the site. In the event of trigger exceedances during non-reporting years, TGCL will notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken in association with the exceedance.

We trust that the above satisfies your immediate requirements. If you have any questions, or require additional information, please contact the undersigned at 626-5640.

Sincerely,

TRUE GRIT CONSULTING LTD.

A handwritten signature in black ink, appearing to read "J. Garatti", is written over a horizontal line.

Jason Garatti, P.Geo.
Manager, Environmental Services
jgaratti@tgcl.ca

JRG:mb

Attachments: MOE Letter dated January 15, 2009

Copy: Mr. Brian Mooney (Brian.Mooney@Abitibibowater.com)

This is Exhibit M referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 2010

DK VA CG 610

True Grit Consulting Ltd.
1127 Barton Street
Thunder Bay, ON P7B 5N3
T 807.626.5640 F 807.623.5690 www.tgcl.ca



February 19, 2009

Project No.07-020-02

VIA EMAIL (carolyn.simpson@ontario.ca)

Ms. Carolyn Simpson
Senior Environmental Officer
Kenora Area Office
808 Robertson Street, 2nd Floor
P.O. Box 5150
Kenora Bay, ON P9N 3X9

Dear Ms. Simpson:

Re: Response to MOE Letter dated January 15, 2009
Dryden Mercury Disposal Site, Dryden, Ontario

On behalf of AbitibiBowater Inc., True Grit Consulting Ltd. (TGCL) would like to provide our response to a letter prepared by the Ontario Ministry of the Environment (MOE) entitled *2005/2006 Monitoring Report, Bowater Closed Mercury Disposal Site, Dryden, Ontario, C. of A. #A7145502*, dated January 15, 2009 (attached).

Mr. Alisdair Brown, P.Eng., P.Geo., Regional Hydrogeologist with the MOE Northern Region Technical Support Section completed a review of the 2005 and 2006 annual reports completed by Wardrop Engineering Inc. Below is a summary of comments and recommendations provided by Mr. Brown based on these reports.

- The key source wells, MW3 and MW4, where elevated mercury concentrations have been detected are screened at less than 4 m below ground surface and are monitoring the shallow groundwater regime. It is therefore likely that the trigger well MW9 is not monitoring the same groundwater regime where impact has been confirmed in the source wells. I therefore recommended that a new shallow monitoring well (screened above 4 m) is required in the vicinity of MW9. The new well would be used as a trigger well in addition to MW1 and MW9 and assessed in accordance with the trigger program for the site.
- Currently, surface water monitoring at the site is limited to the collection of a sample from the ditch located along the west and south sides of the site, which is located on the upgradient side of the fill area. I recommend that a second surface water sample should be collected (at the same frequency as all other sampling) from the ditch (rip rap ditch) located along the east side of the fill area, which is directly downgradient of the fill area.
- Reporting frequency at this site has been reduced to every two years at the MOE's initiative. It is my recommendation that this frequency can be continued. However, it is anticipated that if mercury impacts are measured which would trigger the contingencies, the proponent would notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken.

Based on our review of the MOE's comments and associated recommendations, TGCL concurs with the MOE's recommendation to install a new shallow trigger well (screened above 4 m) in the vicinity of MW9 to assess water quality at the site. TGCL recommends installing the new well during the spring (June) 2009 monitoring event and collecting water samples for analysis and inclusion in the 2009 annual report.

Ms. Carolyn Simpson
Project No. 07-020-02
February 19, 2009



TGCL also concurs with the MOE's recommendation to include an additional surface water sample location downgradient of source wells MW3 and MW4 along the east side of the fill area to assess water quality potential discharging from the site. Surface water sampling at this new location will commence in 2009 and the results included in the annual report.

The sampling frequency and analytical program for these new groundwater and surface sample locations will be consistent with the current approved program for the site. In the event of trigger exceedances during non-reporting years, TGCL will notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken in association with the exceedance.

We trust that the above satisfies your immediate requirements. If you have any questions, or require additional information, please contact the undersigned at 626-5640.

Sincerely,

TRUE GRIT CONSULTING LTD.

A handwritten signature in black ink, appearing to read 'J. Garatti', is written over a horizontal line.

Jason Garatti, P.Geo.
Manager, Environmental Services
jgaratti@tgcl.ca

JRG:mb

Attachments: MOE Letter dated January 15, 2009

Copy: Mr. Brian Mooney (Brian.Mooney@Abitibibowater.com)

This is Exhibit 'M' referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 20th
day of AUGUST 20 10

PK VAC 6 10

True Grit Consulting Ltd.
1127 Barton Street
Thunder Bay, ON P7B 5N3
T 807.626.5640 F 807.623.5690 www.tgcl.ca



February 19, 2009

Project No.07-020-02

VIA EMAIL (carolyn.simpson@ontario.ca)

Ms. Carolyn Simpson
Senior Environmental Officer
Kenora Area Office
808 Robertson Street, 2nd Floor
P.O. Box 5150
Kenora Bay, ON P9N 3X9

Dear Ms. Simpson:

**Re: Response to MOE Letter dated January 15, 2009
Dryden Mercury Disposal Site, Dryden, Ontario**

On behalf of AbitibiBowater Inc., True Grit Consulting Ltd. (TGCL) would like to provide our response to a letter prepared by the Ontario Ministry of the Environment (MOE) entitled *2005/2006 Monitoring Report, Bowater Closed Mercury Disposal Site, Dryden, Ontario, C. of A. #A7145502*, dated January 15, 2009 (attached).

Mr. Alisdair Brown, P.Eng., P.Geo., Regional Hydrogeologist with the MOE Northern Region Technical Support Section completed a review of the 2005 and 2006 annual reports completed by Wardrop Engineering Inc. Below is a summary of comments and recommendations provided by Mr. Brown based on these reports.

- The key source wells, MW3 and MW4, where elevated mercury concentrations have been detected are screened at less than 4 m below ground surface and are monitoring the shallow groundwater regime. It is therefore likely that the trigger well MW9 is not monitoring the same groundwater regime where impact has been confirmed in the source wells. I therefore recommended that a new shallow monitoring well (screened above 4 m) is required in the vicinity of MW9. The new well would be used as a trigger well in addition to MW1 and MW9 and assessed in accordance with the trigger program for the site.
- Currently, surface water monitoring at the site is limited to the collection of a sample from the ditch located along the west and south sides of the site, which is located on the upgradient side of the fill area. I recommend that a second surface water sample should be collected (at the same frequency as all other sampling) from the ditch (rip rap ditch) located along the east side of the fill area, which is directly downgradient of the fill area.
- Reporting frequency at this site has been reduced to every two years at the MOE's initiative. It is my recommendation that this frequency can be continued. However, it is anticipated that if mercury impacts are measured which would trigger the contingencies, the proponent would notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken.

Based on our review of the MOE's comments and associated recommendations, TGCL concurs with the MOE's recommendation to install a new shallow trigger well (screened above 4 m) in the vicinity of MW9 to assess water quality at the site. TGCL recommends installing the new well during the spring (June) 2009 monitoring event and collecting water samples for analysis and inclusion in the 2009 annual report.

Ms. Carolyn Simpson
Project No. 07-020-02
February 19, 2009



TGCL also concurs with the MOE's recommendation to include an additional surface water sample location downgradient of source wells MW3 and MW4 along the east side of the fill area to assess water quality potential discharging from the site. Surface water sampling at this new location will commence in 2009 and the results included in the annual report.

The sampling frequency and analytical program for these new groundwater and surface sample locations will be consistent with the current approved program for the site. In the event of trigger exceedances during non-reporting years, TGCL will notify the MOE district office and provide a description of the trigger mechanism and the contingencies being undertaken in association with the exceedance.

We trust that the above satisfies your immediate requirements. If you have any questions, or require additional information, please contact the undersigned at 626-5640.

Sincerely,

TRUE GRIT CONSULTING LTD.

Jason Garatti, P.Geo.
Manager, Environmental Services
jgaratti@tgcl.ca

JRG:mb

Attachments: MOE Letter dated January 15, 2009

Copy: Mr. Brian Mooney (Brian.Mooney@Abitibibowater.com)

This is Exhibit ^{'N'} referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 20 10

Faieta, Mario (ENE)

From: Pike, Alexandria [apike@dwpv.com]
Sent: August 24, 2010 10:48 AM
To: Faieta, Mario (ENE); Melanie.Allaire@Abitibibowater.com
Cc: SDunphy@stikeman.com; Greg.J.Adams@ca.ey.com; LWilliams@tgf.ca
Subject: RE: Tr : RE: Abitibi
Attachments: TOR_DOCUMENTS-#2584714-v4-MOE_request_response-Kenora_Dryden.DOC

Mario - In response to your information requests, I have prepared an explanation of the estimated environmental exposures based on conversations I have had with AbitibiBowater personnel and their consultants and attach a draft. There is no documentation supporting such estimates (beyond what has been provided to you previously) but the estimates are believed to be conservative. Should further details become available, I will provide you with a further revised draft. My responses to your specific questions are set out in CAPS below.

Regards, Alex

From: Faieta, Mario (ENE) [mailto:mario.faieta@ontario.ca]
Sent: August 23, 2010 4:13 PM
To: Pike, Alexandria; Melanie.Allaire@Abitibibowater.com
Cc: SDunphy@stikeman.com; Greg.J.Adams@ca.ey.com; LWilliams@tgf.ca; Kondo, Victoria (ENE); Huang, Edmund (JUS)
Subject: RE: Tr : RE: Abitibi

Alex -

Here is a recap for your benefit and mine of the questions that I have asked with one addition (#5):

- 1) As discussed, please provide me with an explanation of how the estimated environmental costs stated in paragraphs 15(h), (j) and (k) of the Amended Notice of Motion, dated August 4, 2010 were determined along with any reports or other documents that support such estimates. [SUMMARY ATTACHED]
- 2) Does have Abitibi have any views on how many more years of monitoring and treatment described in paragraph 15(h) and (k) might be required? [SUMMARY ATTACHED]
- 3) In respect of paragraph 15(h), does have Abitibi have any views on the estimated costs of remedying the groundwater and repairing the landfill in the event that the risk of failure of the encapsulation of the mercury landfill is realized? [SUMMARY ATTACHED]
- 4) I have questions regarding paragraph 6 of Exhibit R-11 of the Amended Motion Record. I want to make sure that I understand what is proposed. The draft order at Exhibit R-11 states that upon issuance of the draft Order authorizing the transfer of the property and payment of the purchase price, title shall pass to the purchaser "free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, ... or other claims or encumbrances whether or not that have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise ..."

Is it Abitibi's position that the effect of this Order will be that:

- i) the purchaser will not be bound by the current Certificate of Approval (as would be the case by virtue of section 19 of the EPA)?;
 - ii) the purchaser will be exempt from obligations under any environmental statute in respect of this landfill?
 - iii) the MOE will be barred from issuing environmental orders to the purchaser in respect of this landfill?
 - iv) the purchaser will be exempt from prosecution for contraventions of the EPA in respect of this property?
- [AS PER AUGUST 23, 2010 E-MAIL OF SEAN DUNPHY TO RICHARD BUTLER, CC YOU]

5) I have similar questions regarding Abitibi's position on the effect of the Order sought (eg. Exhibit R-11 of the Amended Motion

08/30/2010

Record dated August 4, 2010) in view of the Third Claims Procedure Order. Is it Abitibi's position that following the proposed transfer of the three waste disposal sites in Ontario that:

- i) Abitibi will be exempt from obligations under any environmental statute in respect of these landfills?
 - ii) the MOE will be barred from issuing environmental orders to Abitibi in respect of these landfills?
 - iii) Abitibi will be exempt from prosecution for contraventions of the EPA in respect of these properties?
- [AS PER AUGUST 23, 2010 E=MAIL OF SEAN DUNPHY TO RICHARD BUTLER, CC YOU]

6) What is the total dollar value of the "environmental exposure" (ie. potential environmental liability exposure) with respect to all of the non-core properties located in Ontario that are described in the Amended Motion dated August 4, 2010? [TOTAL: \$5,333,000: MUD LAKE \$1,083,000, MARGACH \$4M, DRYDEN \$250,000]

7) What is the total dollar value of the "environmental exposure" with respect to all of the non-core properties, regardless of location, that are described in the Amended Motion dated August 4, 2010? [I AM UNABLE TO COMMENT ON LIABILITIES RELATED TO OTHER PROVINCES]

Mario Faieta
Counsel, Ministry of the Environment

Office: (416) 314-6482
Blackberry: (647) 688-4230
Fax: (416) 314-6579

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From: Pike, Alexandria [mailto:apike@dwvpv.com]
Sent: August 23, 2010 3:57 PM
To: 'Melanie.Allaire@Abitibibowater.com'; Faieta, Mario (ENE)
Cc: SDunphy@stikeman.com; Greg.J.Adams@ca.ey.com; LWilliams@tgf.ca
Subject: RE: Tr : RE: Abitibi

Please use the following number for the call at 10:30 tomorrow:

1-888-260-2688
passcode: 623466

Mario - Please be advised that Ernst & Young (Greg Adams) and their counsel (Leanne Williams, Thornton Grout Finnigan) are seeking information to determine the position that the Ontario MOE will be taking on the relief requested so that the Monitor may file a report to the Court (as mandated). E+Y was advised by BC that Ontario and NB want a one week adjournment of the hearing and would like to hear the position of the Ontario MOE on this request.

Sean Dunphy (Stikemans, Abitibi insolvency counsel), Melanie Allaire (Abitibi) and myself (Davies, Abitibi Ontario environmental counsel) will all join the call.

regards,
Alex Pike

From: Melanie.Allaire@Abitibibowater.com [mailto:Melanie.Allaire@Abitibibowater.com]
Sent: August 23, 2010 1:40 PM
To: Pike, Alexandria
Cc: SDunphy@stikeman.com; Greg.J.Adams@ca.ey.com; LWilliams@tgf.ca
Subject: Tr : RE: Abitibi

08/30/2010

Alex,

Could you send a dial-in for our call with the MOE tomorrow at 10:30? I copied everybody who are going to attend.

Thanks,

Mélanie Allaire
Avocate Sénior / Senior Legal Counsel
AbitibiBowater
1155, rue Metcalfe, bureau 800
Québec, Canada, H3B 5H2
Tel: 514.394.3630
F: 514.394.3644

----- Transféré par Melanie Allaire/LEGL/MTL/CSC le 2010-08-23 13:36 -----

De : "Faieta, Mario (ENE)" <mario.faieta@ontario.ca>

A: "Pike, Alexandria" <apike@dwpv.com>

Cc: <melanie.allaire@abitiibiBowater.com>, "Kondo, Victoria (ENE)" <Victoria.Kondo@ontario.ca>, "Taylor, John (ENE)" <John.P.Taylor@ontario.ca>
Trina (ENE)" <Trina.Rawn@ontario.ca>

Date: 2010-08-23 13:31

Objet : RE: Abitibi

Yes, subject to being advised by the end of the day:

- 1) the names of the persons that will be on the call
- 2) what specific issues/matters they would like to discuss so that I have time to consider them and seek instructions.

In addition to the questions that I asked last week, could you also please advise:

- 1) what is the total dollar value of the "environmental exposure" (ie. potential environmental liability exposure) with respect to all of the non-core properties located in Ontario that are described in the Amended Motion dated August 4, 2010?
- 2) what is the total dollar value of the "environmental exposure" with respect to all of the non-core properties, regardless of location, that are described in the Amended Motion dated August 4, 2010?

Mario Faieta
Counsel, Ministry of the Environment

Office: (416) 314-6482
Blackberry: (647) 688-4230
Fax: (416) 314-6579

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08/30/2010

From: Pike, Alexandria [mailto:apike@dwpv.com]
Sent: August 23, 2010 12:58 PM
To: Faieta, Mario (ENE)
Cc: 'melanie.allaire@abitibiBowater.com'
Subject: Abitibi

Mario - Would you be available for a call with the Monitor (and Abitibi and its counsel) tomorrow at 10:30?

I hope to be in a position to provide responses to your inquiries re: cost estimates later today.

thanks, Alex



Alexandria Pike

DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor
1 First Canadian Place
Toronto, Ontario M5X 1B1
www.dwpv.com

Tel 416 367 6989
Fax 416 863 0871
apike@dwpv.com

This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately reply e-mail or by telephone (collect if necessary), delete this e-mail and destroy any copies.

08/30/2010

Ontario Non-Core Properties: Summary of Estimated Environmental Exposure

Dryden

The encapsulation and closure of the Dryden landfill undertaken in 1980 (which involved mixing mercury into concrete to encapsulate within a dedicated lined landfill) has been effective in containing substances including mercury and chloride, as demonstrated by ongoing monitoring activities. The Ministry has conducted inspections of the landfill, received monitoring results and provided comments regarding such monitoring (which have been addressed by Bowater). Costs for monitoring and maintenance has been estimated by Bowater at \$250,000 for a period of 20 years which includes annual monitoring costs of approx. \$10,000 as well as \$50,000 with respect to activities such as ditch cleaning, vegetative cover repair and monitoring well replacement as needed. Bowater is of the view that this is a reasonable estimate of time and costs related to future management of the Dryden landfill.

There is currently no anticipated risk of failure of the encapsulation and such potential risk is viewed as highly unlikely. In the unlikely event that mercury or chloride be released from the landfill at levels that would require further action, it is anticipated that mitigation measures could be implemented (such as increasing vegetation on the site) without having to repair the encapsulation. Such mitigation measures are expected to be achieved at reasonable costs (eg. within the estimated maintenance costs or <\$100,000 additional funds).

Kenora Margach Landfill

With respect to the maximum estimate set out in the motion materials of \$4 million (for capping, closure and post-closure groundwater monitoring for the next 30 years), Abitibi views this as a conservative estimate. Monitoring and maintenance costs for this site are currently in the range of \$75,000/yr with such costs to decrease to approximately \$36,000/yr following closure. Closure activities at the site have been estimated to be in the range of \$2 million for capping and vegetation with additional costs of approximately \$100,000 for general decommissioning, leachate seep repair and regrading costs. The 30-year timeframe is conservative: 25 years is more consistent with MOE post-closure monitoring requirements.

Mud Lake Landfill

The Mud Lake Landfill is a closed facility and post-closing monitoring has been carried out for approximately 6 years. The estimated exposure cost set out in the motion materials was \$50,000 per year for long term monitoring, collection and pumping equipment maintenance in connection with leachate discharge as well as between \$5,000 and \$7,000 per year for leachate treatment costs at the municipal wastewater treatment plant. The majority of such costs are incurred directly by Abitibi and this estimate is considered to be conservative. Third party consultant costs for monitoring are approximately \$14,000/yr. A timeframe for future monitoring requirements has not been set but is not expected to extend beyond an additional 20 years.



Environmental Review Tribunal

This is Exhibit 0 referred to in the
affidavit of JOHN TAYLOR
sworn before me, this 30th
day of AUGUST 2010

Manuel
A COMMISSIONER, ETC.

Case Nos.: 05-122 to 05-130
06-216 to 06-224

General Chemical Industrial Products Inc. v. Director, Ministry of the Environment

In the matter of appeals by General Chemical Industrial Products Inc., General Chemical Canada Holding Inc., De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, David Graziosi, Derek L. Rogers, Bliss A. White and Jillian Swartz filed on December 14, 2005 for a Hearing before the Environmental Review Tribunal pursuant to section 140 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, with respect to Director's Orders Nos. 1 and 2 (as amended) issued by the Director, Ministry of the Environment, on November 29, 2005 under sections 17, 18, 43 and 196 of the *Environmental Protection Act*, regarding a waste disposal site, known as the soda ash settling basin located at the General Chemical Plant Facility in the Town of Amherstburg, County of Essex, Ontario; and

In the matter of appeals by De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, General Chemical Industrial Products Inc., General Chemical Canada Holding Inc., David Graziosi, Derek L. Rogers, Jillian Swartz and Bliss A. White filed on March 20, 2007 for a Hearing before the Environmental Review Tribunal pursuant to section 140 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, with respect to a Director's Order No. GCCL-07/02/28 issued by the Director, Ministry of the Environment, on March 1, 2007 under sections 18, 43 and 196 of the *Environmental Protection Act*, regarding the undertaking of a remedial action plan to address certain environmental contamination concerns at the General Chemical Plant Facility located in the Town of Amherstburg, County of Essex, Ontario; and

In the matter of a proposed withdrawal of the appeals as part of a Settlement Agreement dated October 23, 2008.

Before:

Knox M. Henry, Panel Chair
Paul Muldoon, Vice-Chair

Appearances:

Robert Fishlock

-

Counsel for the Appellants, except General
Chemical Canada Ltd.

Environmental Review Tribunal Decision:
General Chemical Industrial Products Inc. v.
Director, Ministry of the Environment

05-122 to 05-130
06-216 to 06-224

Aaron Atcheson	-	Counsel for PricewaterhouseCoopers Inc., Interim Receiver for the Appellant, General Chemical Canada Ltd.
Isabelle O'Connor Mario Faieta and Albert Engel	-	Counsel for the Directors, Ministry of the Environment
Armando DeLuca and Edward Posliff	-	Counsel for the Other Party, the Town of Amherstburg

Dated this 26th day of February, 2009.

Reasons for Decision

Background:

Micheline Riopelle, Director, Ministry of the Environment ("MOE"), issued two Orders on November 29, 2005 to General Chemical Canada Ltd. ("GCCL"), General Chemical Canada Holding Inc. ("GCCH"), General Chemical Industrial Products Inc. ("GCIP"), De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, David Graziosi, Derek L. Rogers, Bliss A. White, and Jillian Swartz concerning a soda ash settling basin ("SASB") waste disposal site located at the General Chemical Plant Facility in the Town of Amherstburg, Ontario (the "Site"). Director's Order No. 1 (as amended) required the company to put in place site security, to carry out an interim monitoring plan, and to develop a comprehensive monitoring plan, and Director's Order No. 2 (as amended) required the company to conduct a study regarding waste at the Site. Robert M. Fishlock, Counsel for all of the named Orderes except GCCL, filed a Notice of Appeal with the Environmental Review Tribunal (the "Tribunal") on December 14, 2005 and also requested a stay of Director's Order No. 2 (the "GCPI Appeal"). In the Tribunal Order dated March 2, 2006, the Town of Amherstburg was added as a Party and subsequently, Loris Collavino was added as a Participant and Tom Henderson from the Public Advisory Council of the Detroit River Council was added as a Presenter.

With respect to *Bloomquist v. the MOE* (06-216 to 06-244), on March 1, 2007, Michael Moroney, Director, MOE, issued Order No. GCCL-07/02/28 (the "Bloomquist Appeal") to: GCCL, GCCH, GCIP, De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, David Graziosi, Derek L. Rogers, Bliss A. White, and Jillian Swartz concerning a requirement to develop a Remedial Action Plan ("RAP") to address environmental concerns at the Site.

Robert Fishlock, Counsel for all the named Orderes except GCCL, filed a Notice of Appeal with the Tribunal on March 1, 2007 and also requested a stay of the Director's Order. A Preliminary Hearing in the Bloomquist Appeal was held by teleconference on September 27, 2007, at which time, on consent, the Tribunal granted Party status to the Town of Amherstburg and Participant status to Loris Collavino. Further, it was agreed that the Hearing of this matter should be consolidated with the Hearing of the GCIP Appeal.

Since the commencement of these appeals, the Tribunal has issued some two dozen Orders, initially with respect to the GCIP Appeal and then with respect to the GCIP and Bloomquist

Appeals once the appeals were consolidated. In both appeals, stays have been granted by the Tribunal and extended at various times. Many of the Orders pertain to the rescheduling of the Hearing dates since the Parties were involved in mediation efforts to conclude a settlement agreement. Further details with respect to the background of these appeals are outlined in the Tribunal's Order dated September 16, 2008.

Following a teleconference on September 25, 2008, the Tribunal, in its Order dated October 3, 2008, granted the request for an adjournment on consent of the Parties and scheduled the Hearing to commence on October 8, 2008, at 10:00 a.m. The purpose of the Hearing was to review the settlement agreement. The Tribunal also extended the stays until October 8, 2008. A further teleconference was held on October 7, 2008 at which time Mr. Fishlock requested a short adjournment of the Hearing on the grounds that the settlement agreement had yet to be finalized, although, in his opinion, it was very close to being concluded. The Tribunal found that, in light of the fact that the Hearing was scheduled for the next day, and that the other proceeding related to the Site (File No. 07-122) would also be spoken to at the Hearing, it would be appropriate to deny Mr. Fishlock's adjournment request and to convene the Hearing in Amherstburg, Ontario on October 8, 2008, as scheduled.

At the Hearing held on October 8, 2008, the Parties provided an overview of the settlement discussions and agreed to a date to have the settlement agreement reviewed by the Tribunal. In its Order dated October 20, 2008, the Tribunal scheduled a Hearing for October 31, 2008 at 10:00 a.m. in the Council Chambers, Town of Amherstburg, 271 Sandwich Street South, Amherstburg, Ontario. The stays in this proceeding were also extended until October 31, 2008.

At the Hearing on October 31, 2008, Mr. Fishlock presented Minutes of Settlement (the "Settlement Agreement") executed by the Parties. The Settlement Agreement is attached to this Decision as "Appendix B."

In its Order dated December 3, 2008, the Tribunal reviewed the Settlement Agreement concluded by the Parties and found that the Settlement Agreement is consistent with the purpose and provisions of the *Environmental Protection Act* and is in the public interest. The Tribunal also stated that if all of the conditions in the Settlement Agreement were met on or before January 30, 2009, the Director was to notify the Tribunal. The Order stated that, upon notification, the Tribunal would issue its final Decision in this proceeding, which would include an Order revoking the Director's Orders and providing that all funds paid to the province of Ontario under the Settlement Agreement be held and used as financial assurance for the

Certificate of Approval governing the Site. The Order also extended the stays granted in these proceedings until January 30, 2009.

On February 3, 2009, Isabelle O'Connor, Counsel for the Director, wrote to the Tribunal advising it that all of the conditions in the Settlement Agreement had been met.

There is another Director's Order pertaining to the Site. With respect to *General Chemical Canada Ltd. v. the Director, MOE*, Tribunal Case No. 07-122 (the "PWC Appeal"), the company ceased manufacturing operations on January 19, 2005 and, subsequently, was assigned into bankruptcy effective November 23, 2005. S. Funtig and Associates was appointed as Trustee in Bankruptcy and PriceWaterhouseCoopers ("PWC") was appointed the Interim Receiver (the "Receiver") of GCCL's assets and property, with the exception of the SASB and the property on which the SASB is situated.

On December 21, 2007, the Director issued Order No. GCCL-07/12/21 (the "Amending Order") to GCCL, amending the Director's Order of March 1, 2007 to require the provision of a financial assurance and registration of a Certificate of Requirement on title to the Site. On January 7, 2008, GCCL appealed the Amending Order to the Tribunal through its Receiver, PriceWaterhouseCoopers, and sought a stay of the Amending Order pending the outcome of the PWC Appeal. Counsel for PWC often appeared in the other proceedings for the purposes of being updated on the status of the GCIP and Bloomquist appeals and to co-ordinate schedules with respect to all of the appeals relating to the Site. A Settlement Agreement has been reached in that proceeding and the review of that Agreement is the subject of an Order dated December 3, 2008.

Further details concerning Case No. 07-122 are outlined in the Tribunal Orders dated April 28, May 6, June 9, June 25, October 1, 2008, October 20, 2008 and December 3, 2008. Further to the Settlement Agreement, a Decision was issued by the Tribunal on February 26, 2009.

Discussion and Analysis:

Under the Settlement Agreement, the Parties agreed that the Appellants would pay an additional \$17 million as a financial assurance in addition to the existing \$3.4 million that is now a financial assurance as a term of the CofA with respect to the Site. There would also be monies to address monitoring, reporting and insurance requirements. The Settlement Agreement also states that all of the Director's Orders are to be revoked as against the Appellants, but that they will not be

revoked as against GCCL. The Settlement Agreement also includes a number of conditions agreed to by the Parties, such as the registration of Certificates of Requirement and the execution of certain releases. As described in the Tribunal's Order of December 3, 2008, the basic scheme of the Settlement Agreement is that, after the closing date of the Agreement, the MOE would issue a new Order directing GCCL to undertake remediation measures with respect to the Site. GCCL, a bankrupt company, would not be in a position to comply with the Order. As such, the MOE would then oversee the compliance of the Order using the \$20.4 million available through the financial assurance that is a condition of the CofA for the SASB.

Under the Settlement Agreement, the Appellants are released from any claim by the Province and Town of Amherstburg for further compensation arising from the Site. They will, however, purchase insurance for a period of ten years with respect to third party claims.

It was a condition of the Settlement Agreement that all conditions within the agreement must be fulfilled by January 30, 2009. On February 3, 2009, the Tribunal was notified by Ms. O'Connor that, in fact, all of the conditions have been satisfied.

Findings:

In its Order dated December 3, 2008, the Tribunal made a finding that the Settlement Agreement is consistent with the purpose and provisions of the *Environmental Protection Act* and is in the public interest. On February 3, 2009, the Tribunal was notified that all of the conditions within the Settlement Agreement have been fulfilled. Hence, as noted in its December 3, 2008 Order, the Tribunal found that it is appropriate for the Tribunal to revoke the Director's Orders relating to this proceeding in accordance with the Settlement Agreement. Further, the Tribunal will issue an Order providing that all funds paid to the Province of Ontario should be held and used as a financial assurance against the SASB's CofA.

In light of its Order of December 3, 2008 and the submission that all of the conditions within the Settlement Agreement have been fulfilled, the Tribunal finds that the Director's Orders as against the Appellants (except for GCCL) should be revoked and that all funds paid to the Province of Ontario under the Settlement Agreement should be held and used as financial assurance with respect to the Site's CofA.

Decision

Having found in its Order dated December 3, 2008 that the Settlement Agreement concluded in this proceeding and attached as "Appendix B" to this Decision is consistent with the purpose and provisions of the *Environmental Protection Act* and is in the public interest and that all of the conditions have been fulfilled within the Agreement, the Tribunal orders as follows:

1. Director's Orders Nos. 1 and 2 (as amended) issued to General Chemical Industrial Products Inc., General Chemical Canada Holding Inc., De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, David Graziosi, Derek L. Rogers, Bliss A. White and Jillian Swartz by the Director, Ministry of the Environment, on November 29, 2005 under sections 17, 18, 43 and 196 of the *Environmental Protection Act*, regarding a waste disposal site, known as the soda ash settling basin located at the General Chemical Plant Facility in the Town of Amherstburg, County of Essex, Ontario, are revoked, except as against General Chemical Canada Ltd.;
2. Director's Order No. GCCL-07/02/28 issued to De Lyle W. Bloomquist, H. Scott Ellis, Eugene I. Davis, General Chemical Industrial Products Inc., General Chemical Canada Holding Inc., David Graziosi, Derek L. Rogers, Jillian Swartz and Bliss A. White by the Director, Ministry of the Environment, on March 1, 2007 under sections 18, 43 and 196 of the *Environmental Protection Act*, regarding the undertaking of a remedial action plan to address certain environmental contamination concerns at the General Chemical Plant Facility located in the Town of Amherstburg, County of Essex, Ontario, is revoked, except as against General Chemical Canada Ltd.; and
3. All funds paid to the Province of Ontario pursuant to the terms of the Settlement Agreement are to be held and used as financial assurance with respect to the performance of environmental measures described in Provisional Certificate of Approval for a Waste Management Disposal Site (Landfill) No. A62067 issued to GCCL with respect to the SASB.

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The Tribunal, therefore, dismisses the appeals in accordance with its Rules of Practice

Director's Orders Revoked
Settlement Payments Considered as Financial Assurance
Appeals Dismissed

Knox M. Henry, Panel Chair

Paul Muldoon, Vice-Chair

Appendix A - List of Parties, Participant and Presenter
Appendix B - Minutes of Settlement dated October 23, 2008.

Appendix A

List of Parties, Participant and Presenter

Appellants: (Case Nos. 05-122 to 05-130 and 06-216 to 06-224)	General Chemical Industrial Products Inc. General Chemical Canada Holding Inc. Lyle W. Bloomquist H. Scott Ellis Eugene I. Davis David Graziosi Derek L. Rogers Bliss A. White Jillian Swartz
Counsel for the Appellants:	Paul Schabas and Robert Fishlock Blake, Cassels and Graydon LLP Box 25, Commerce Court West 199 Bay Street Toronto, ON M5L 1A9
Director: (in Case Nos. 05-122 to 05-130)	Micheline Riopelle Director, Sections 17, 18, 43 and 196 <i>Environmental Protection Act</i>
Director: (in Case Nos. 06-216 to 06-224 and 07-122)	Michael Moroney Director, Sections 17, 18, 43 and 196 <i>Environmental Protection Act</i>
Counsel for the Directors:	Isabelle O'Connor, Mario Faieta, Albert Engel, Legal Services Branch Ministry of the Environment 135 St. Clair Avenue West, 10 th Floor Toronto, ON M4V 1P5
Other Party:	The Town of Amherstburg
Counsel for the Other Party:	Armando F. DeLuca, Q.C. Mousseau DeLuca McPherson Prince LLP Westcourt Place 500-251 Goyeau Street Windsor, ON N9A 6V2

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