

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL ARBITRATION RULES**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON,  
DOUGLAS CLAYTON, DANIEL CLAYTON, and BILCON OF DELAWARE**

Investors

v.

**GOVERNMENT OF CANADA**

Respondent

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**WITNESS STATEMENT OF  
PAUL BUXTON**

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July 20, 2011

## **I. Background**

1. I am the Project Manager of Bilcon of Nova Scotia. In this capacity, I am responsible for overseeing the business operations of the Company. I was educated at the University of Manchester in England, from which I hold an Honours Degree in Civil Engineering. I am a life member of the Association of Professional Engineers of Nova Scotia.
2. I am a resident of Nova Scotia, and have lived and worked in the Annapolis Basin area, which is very close to the Whites Point area, for almost 40 years. I have been involved in a number of local business developments, including serving as the:
  - a. Director, Nova Scotia Chamber of Mineral Resources;<sup>1</sup>
  - b. Executive Director, Municipality of Town of Digby Development Commission;<sup>2</sup>
  - c. Advisor to the Minister of Environment on Hazardous Waste Management;<sup>3</sup>
  - d. Chairman, Minister's Taskforce on Hazardous Waste Management;<sup>4</sup>
  - e. Member, Executive Committee of the Nova Scotia Environmental Control Council;<sup>5</sup> and
  - f. Executive Director, Annapolis Royal Development Commission.<sup>6</sup>
3. I have been President or Principal of several engineering firms:
  - a. From 1978 until 2011, I served as President of Acadia Developments Inc., a company specializing in heritage building restoration and management.
  - b. From 1990 until 2006, I served as a Principal of Delta Four Associates Inc., an engineering consultancy firm.

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<sup>1</sup> From 2005-2006

<sup>2</sup> From 1990-1995

<sup>3</sup> From 1988-1989

<sup>4</sup> From 1987-1988

<sup>5</sup> From 1983-1987

<sup>6</sup> From 1979-1987

- c. From 1997 to 1999, I served as a Principal of Eastern Canada Bioremediation Inc., a company involved in the development of Bioremediation Solutions for contaminated soil.
4. I have been involved in providing professional engineering services to numerous projects throughout south west Nova Scotia. These projects have involved many heritage and tourism projects. I have also managed clean-up operations for oil spills to both residential and commercial premises.
5. I have also been involved with a number of Phase I and Phase II Environmental Assessments for other projects. I have carried out Phase I and Phase II Environmental Assessments for commercial buildings, service stations and the Town of Annapolis Royal, which is close to Whites Point community.
6. I am familiar with the duties of an environmental review panel under an environmental assessment. In the 1980s, I sat on a Board, administered by the Nova Scotia Department of Environment and Labour, known as NSDEL, to review the environmental impacts of the Waverly Quarry, near Halifax. The Board reported directly to the Minister of Environment on these issues.

## **II. Involvement with the Whites Point Quarry Project**

7. Nova Scotia is well-known as a desirable location for aggregate rock extraction. In 1992 alone, there were over 75 aggregate quarries in operation in the Province.
8. In January 2002, I was approached by Nova Stone to assist it in obtaining a permit to operate a quarry at Whites Point. The Company was interested in developing a significant quarry to produce crushed rock for export, and in applying initially for a permit for a 3.9 hectare quarry. The company planned to carry out preliminary investigations particularly for blasting to assist with the permitting of the larger quarry. Nova Stone applied for the permit, and the Nova Scotia government issued the permit on April 30th, 2002.
9. The Whites Point Quarry was the site for a former gravel pit, which had been operating in the 1940s and 1950s. I understand that the gravel from the site was specifically used to build a provincial highway (Highway 217), which is one of our highways in Digby County very close to the Whites Point site.
10. In May 2002, I was informed by Nova Stone that it had a partner, Bilcon of Nova Scotia, which was owned by the Clayton family from New Jersey. The joint venture between Nova Stone and Bilcon was known as Global Quarry Products. On behalf of the joint venture, I began preparing for an application for a larger quarry and a dock.
11. I anticipated that the environmental assessment process for the larger Whites Point Quarry would be straightforward and that the partnership would be quarrying by the end of 2003. If the proponent designed the quarry with care and with due consideration of environmental issues, the permit to proceed is often granted within months. I personally carried out significant environmental research throughout 2002, in order for the process

to be as streamlined as possible. In no way did I expect a complicated joint review process.

12. My expectation of a quick quarry approval was also informed by the speedy approval process of the 3.9ha quarry and other quarries operating nearby. For example, I reviewed the "Standard Conditions That Apply to Any Rock Quarry" which was provided to me upon request by the Nova Scotia government.<sup>7</sup>
13. From May 2002 until September 2003, I worked under the direction of Mark Lowe of Nova Stone to prepare the environmental assessment for the quarry and shipping dock.
14. The first meeting between the Nova Stone and various government officials, including representatives of the CEA Agency and NSDEL occurred on August 28, 2003. This meeting was an opportunity to ask questions as to why a joint panel review would be used to assess the Whites Point Quarry project.
15. In October 2003, Nova Stone advised the Clayton family that it wanted to be bought out of their partnership. Bilcon agreed, and I assumed the role of Project Manager on behalf of Bilcon.

### III. Canada's Encouragement of Bilcon to Invest

#### *i. Encouragement by Cabinet Minister Gordon Balser*

16. In 2002 and 2003, the Province of Nova Scotia was engaged in a prominent advertising campaign, proclaiming that "**Nova Scotia was Open for Business**". The campaign was actively promoted throughout the environmental assessment process for Whites Point. David Morse, who at the time was Nova Scotia's Minister of Natural Resources, made many related proclamations to the public, and to me.
17. I also met on several occasions with Gordon Balser, a Cabinet Minister, and the Member of the Nova Scotia Legislature for the Digby area. He was very keen to have new jobs and investment in his constituency.
18. The Nova Scotia Premier himself, Rodney MacDonald, personally told the Claytons that the Province was "**Open for Business**". Like Minister Balser, the Premier was supportive of the quarry investment the Claytons were considering making in Nova Scotia.
19. Throughout 2002, I had at least 15 meetings and discussions with Minister Balser,<sup>8</sup> who always encouraged the Clayton's investment in the region, and kept reinforcing the

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<sup>7</sup> Fax from Danette Deveau (NSDEL) to Mark Love (Nova Stone), "Standard Conditions that apply to any rock quarry", dated January 25, 2002. (*Buxton Exhibit 10*)

<sup>8</sup> These meetings and discussions took place on June 3, June 10, June 16, June 24, July 4, July 19, August 9, August 16, October 31, November 6, November 20, November 27, December 2, December 17, and December 20, 2002.

positive impact the Whites Point Quarry would have on job creation and related investment in the area. Other department officials from the Nova Scotia Department of Natural Resources made representations to encourage the Claytons to invest in the aggregate sector.

20. Given Minister Balser's position as a Cabinet Minister, his continuous encouragement of the benefits of Whites Point Quarry to me and the Claytons was vital to their decision to proceed with the Quarry.
21. There were even discussions on public relations with Minister Balser, where I discussed how Bilcon could better present the benefits of the project to the local area.
22. On June 24, 2002, Bill Clayton Sr., Bill Clayton Jr., John Wall, and myself, attended a meeting with Minister Balser at his office. At that meeting, Minister Balser personally invited the Claytons to invest in a quarry at Whites Point.
23. Following the meeting with Minister Balser, Bilcon received a letter from Minister Balser's office thanking the Claytons for meeting with him. Minister Balser's letter also said:

I hope that you and your company will continue to move the project forward as I feel it has the potential to benefit both you and our area. Please do not hesitate to contact me in the future if I can be of any assistance.<sup>9</sup>
24. On July 5, 2002, Mr. Clayton wrote to Minister Balser, thanking him for providing assistance to Bilcon, and also for guiding Bilcon's quarry manager, John Wall, personally around the area.<sup>10</sup> Mr. Wall then had many more meetings with Minister Balser.
25. In December 2002, Minister Balser and I discussed what Bilcon could do to help with the quarry's creation of jobs and being a financial stimulus throughout the local economy.
26. In August 2003, Minister Balser was replaced by Harold (Junior) Theriault as the local Member of the Legislative Assembly for Digby in that month's provincial election. Mr Theriault was a lobster fisher and was opposed to the Whites Point Quarry.

*ii. Encouragement by the Department of Natural Resources*

27. The Nova Scotia Department of Natural Resources was also supportive of Bilcon's investment in the Whites Point Quarry. Departmental officials actively assisted Bilcon with the planning and locating of the Whites Point Quarry.
28. Mr. Kontak came to visit me at my home on December 20, 2004 to examine in detail the drill cores obtained from the drilling program at Whites Point Quarry. I recall him telling

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<sup>9</sup> Letter from Gordon Balser (MLA) to Mr. Clayton (Clayton Block Company) undated. (*Buxton Exhibit 1*)

<sup>10</sup> Letter from the Clayton Group to Gordon Balser (MLA) dated July 5, 2002. (*Buxton Exhibit 2*)

me again that the quality and consistency of the rock would make excellent aggregate. Mr. Kontak later published a study that clearly indicated that the Whites Point Quarry site would make an excellent quarry.<sup>11</sup>

29. Initially, I believed the representatives and officials of the Nova Scotia Government. I believed they were sincere, and that the Government of Nova Scotia would facilitate the “one-window” approach they had already promised to facilitate regulatory approvals.

#### **IV. The Politicization of the Environmental Assessment Process**

30. By the end of 2002, however, the tenor around the Quarry began to change.
31. Canada’s Federal Department of Fisheries and Oceans became more actively involved and the process began to change.
32. In October 2003, I wrote to the Provincial Environment Minister, Kerry Morash, to raise our concern that the environmental permits process was becoming political and that this was turning away from an environmental process.<sup>12</sup>
33. The Quarry project was always a simple one. It began with the request for approval of a small (less than 4 Ha) so that Bilcon could obtain empirical data, by way of a test blast, for a larger quarry.
34. From the beginning I was proactive in informing the government and the public about the project. For example, on January 6, 2003 I attended a meeting with members of NSDEL and Canada’s DFO to ensure the quarry project was understood by everyone.
35. I took every possible step to ensure that the Bilcon quarry project met every requirement of the environmental regime in Nova Scotia and Canada. To that end, Bilcon engaged various governmental departments before taking any action to ensure that the process would be conducted in the appropriate manner.
36. At the outset of the larger quarry project a meeting was arranged with NSDEL to discuss the environmental assessment process.<sup>13</sup> Additionally, meetings followed with the DFO focused on our applications.<sup>14</sup>

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<sup>11</sup> That paper stated that “*The exceptionally massive and fresh nature of the UFU here and its location on high-tide water level makes this an excellent location for aggregate production and the Whites Cove area just to the north of here is being examined for such purpose (as of spring 2005)*” Kontak, Dan, Jarda Dostal and John Greenough. “Geology and Volcanology of the Jurassic North Mountain Basalt, Southern Nova Scotia”. Atlantic Geoscience Society, AGS Special Publication Number 29. Field Trip B3, 2005. (*Buxton Exhibit 3*)

<sup>12</sup> Letter from William R. Clayton to Minister Morash, dated October 24, 2003. (*Buxton Exhibit 4*) (Bates 019512)

<sup>13</sup> Email from Bob Petrie (NSDEL) to Chris Daly (NSDEL), dated May 22, 2002. (*Buxton Exhibit 5*) (CP35185).

37. I designed the project to complement the environment. The loading dock is an example. The pipe pile legs of the dock were specifically designed to greatly minimize the impact to the marine environment, as I designed the legs with the smallest diameter possible. Though it was very costly for Bilcon, the Clayton Group did as much as its resources allowed to ensure the governmental regulators were satisfied.
38. On January 25, 2002, NSDEL supplied an example to Nova Stone of a standard rock quarry permit. That standard permit according to what I knew had no unusual blasting conditions. So I was surprised when NSDEL attached unusual approval conditions to the permit. From the "Standard Conditions" provided by NSDEL, I was surprised that such additional conditions would apply to the Whites Point Quarry.<sup>15</sup> I now know that it was the DFO that directed that these new conditions be included, and that Bilcon would then need approval from DFO directly to show that no harm would be caused to marine mammals. The issue of obtaining DFO permission proved to be a major impediment to the carrying out of test blasting by Bilcon.
39. After I received these conditions for the Whites Point Quarry, I then discovered that the Tiverton quarry, which was only 10km south of the Whites Point Quarry on the same body of water had been approved without the same blasting conditions imposed on our quarry. The Tiverton Quarry supplied basalt for a project owned by Canada's Federal Government, the Tiverton Harbour, and the DFO was the Responsible Authority for the Tiverton Harbour. Blasting at the Tiverton Harbour was under water, whereas at the Whites Point Quarry blasting would have been on land.
40. I was incredulous when the government informed me that the unusual conditions for a small test blast at the Whites Point Quarry was intended to protect marine life, since blasting at Tiverton Harbour actually happened in the water with only a screening level assessment, while at the Whites Point Quarry, it would only be on land. I knew blasting was carried out in the water at the Tiverton Harbour project site after I made my own enquiries with a DFO branch. Gary Hubbard informed me of the blasting in the water.
41. The DFO became preoccupied with certain aspects of Bilcon's project, such as concerns with the North Atlantic Right Whale and iBoF (Inner Bay of Fundy) salmon. That was a concern to me when I knew explosives were used in the water at the Tiverton Harbour

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<sup>14</sup> Letter from Paul Buxton to Phil Zamora (DFO) requesting a meeting with the DFO, CEAA and NSDEL to discuss the blasting plan, dated June 6, 2003. (*Buxton Exhibit 6*) (CP33301); Notes from a meeting, requested by the proponent, with the Habitat Management Division of the DFO discussing, among other aspects, the blasting plan, dated November 2, 2004. (*Buxton Exhibit 7*) (CP03913); Notes from a meeting, requested by the proponent, with the Habitat Management Division of the DFO discussing, among other aspects, the blasting plan, dated December 10, 2004. (*Buxton Exhibit 8*) (CP03914); Email from Phil Zamora (DFO) to Mark McLean (DFO) regarding a request from the proponent for a meeting to discuss the proponent's blasting plan, dated June 5, 2006. (*Buxton Exhibit 9*) (CP36170).

<sup>15</sup> Fax from Danette Deveau (NSDEL) to Mark Love (Nova Stone), "Standard Conditions that apply to any rock quarry", dated January 25, 2002. (*Buxton Exhibit 10*).

with respect to the quarry project. These explosions were mere kilometres from the Tiverton Quarry, where certain "Species at Risk" would have presumably been present. I was surprised that the existence of the North Atlantic Right Whale and iBoF (Inner Bay of Fundy) salmon had become a significant issue for Bilcon when certain "Species at Risk" had failed to become an issue for other proponents in the same area.

*i. DFO involvement*

42. During the environmental assessment process, Bilcon responded to every information request from various governmental departments. But, as every request was satisfied, and before Bilcon could receive an approval or an authorization, new issues would be thrown in that had never been previously discussed.
43. One instance that demonstrates the government's changing assessment criteria involved the requirement for DFO approval before the blasting plan could be reviewed by the NSDEL. Throughout 2002 and 2003, I was required to provide the DFO with three different versions of our plan for the 3.9ha test quarry before it could be reviewed by the NSDEL. Each request from the DFO was different, addressing new issues that were never mentioned in the previous requests, and were unheard of in the industry as far as I knew.
44. Eventually, on May 29, 2003, the DFO took the position that it could no longer review our plan for the 3.9ha quarry, as the process has been transformed into the environmental assessment for the larger 152ha quarry.<sup>16</sup>
45. Bilcon scheduled the small test blast on the site for October or November 2002, and informed NSDEL on October 8, 2002.<sup>17</sup> However, Bilcon was not allowed to do the test as the DFO kept imposing ever-changing conditions by proxy through the Government of Nova Scotia, like repeatedly changing the set-back distance.
46. On the set back conditions, DFO told Bilcon that it required a 500 metre set-back distance from the shoreline to the point of detonation, due to the potential presence of an endangered fish species. At nearby Tiverton, there was blasting with explosives right into the water. DFO advised that it had carried out a modeling exercise to calculate the set back of 500 metres, but, despite various requests, would not provide that model to us. I was dubious about the existence of the model. Nonetheless, Bilcon complied with the required distance in good-faith and in the interest of quarry approval.
47. I was forced to engage a specialist consultant for Bilcon to model the blasting effects. The consultant demonstrated that the blast design was well within the parameters set out in the Guidelines for Blasting in or Near Canadian Waters, and sent to the DFO. I was

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<sup>16</sup> Letter from Phil Zamora (DFO) to Paul Buxton, dated May 29, 2003. (*Buxton Exhibit 11*).

<sup>17</sup> Letter from Paul Buxton to Mr. Petrie, re: Whites Cove Quarry, dated October 8, 2002. (*Buxton Exhibit 12*).



then told by NSDEL that DFO was no longer satisfied with the 500 metre set-back distance because "the area in which mammals could be disturbed by noise may extend beyond the 500 metres discussed in the blasting plan."<sup>18</sup> Bilcon never did receive DFO's model analysis but then DFO arbitrarily changed the set-back distance to only 100 metres. The calculations used by DFO were never provided to Bilcon.

48. In the end, I had little doubt that all the plan changes required were a setup to force our project to apply for authorization under the *Fisheries Act*.<sup>19</sup> After each of Bilcon's attempt to comply with the new and changing requests, DFO raised concerns about the sufficiency of the information presented.

ii. *Referral to Joint Review Panel*

49. I was first informed of the government decision to require a Comprehensive Study on April 14, 2003.<sup>20</sup> For that purpose, I immediately started preparing studies and scientific reports. Then, on July 7, 2003, I found out through a media report in the *Halifax Chronicle Herald* on July 3, 2003 that a different decision had been made to switch the process from a Comprehensive Study to a Review Panel.<sup>21</sup> That was another complete surprise to me and to Bilcon as very little had changed from the requirement to undergo Comprehensive Study to the decision to proceed with a review panel. After hearing about the referral to JRP through the media, I attempted to contact both DFO, NSDEL and the CEA Agency to obtain the basis of the decision. Neither I nor Bilcon ever received an answer.
50. Several months later, on September 10, 2003, I was officially notified of the decision to refer the Whites Point Quarry to a review panel.<sup>22</sup> However, that letter did not give any reason as to why referral had been made. From January to March 2003, Nova Stone made repeated inquiries and expressed concern with the delays in the process and the lack of transparency.

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<sup>18</sup> Letter from Bob Petrie (NSDEL) to Paul Buxton (Bilcon of Nova Scotia), dated July 23, 2002. (*Buxton Exhibit 13*) (CP14034).

<sup>19</sup> E-mail from Derek McDonald (CEAA) to Carole Giroux (CEAA), April 24, 2003. (*Buxton Exhibit 14*) (CP27099).

<sup>20</sup> Letter from Phil Zamora (DFO) to Paul Buxton, stating the level of assessment for the Whites Point Quarry, dated April 14, 2003. (*Buxton Exhibit 15*).

<sup>21</sup> "Thibault calls for full review of Digby Neck quarry plans", *The Chronicle-Herald*, dated July 7, 2003. (*Buxton Exhibit 16*).

<sup>22</sup> Letter from Steven Chapman (CEAA) to Paul Buxton, Global Quarry Products, regarding the environmental assessment process, dated September 10, 2003. (*Buxton Exhibit 17*).

51. Why a relatively small and remote aggregate quarry would require the type of evaluation process that is used for offshore oil drilling platforms and large oil sands projects covering many thousands of square kilometers, I could not understand.
52. I was never informed about the referral to the Joint Review Panel directly. I was informed of that decision by reading the Halifax *Chronicle Herald* on July 3, 2003.
53. In August 2003, I arranged a meeting with Steve Chapman of the Canadian Environmental Assessment Agency to ask why our simple quarry project was reclassified to require a Joint Review Panel - the most onerous level of environmental assessment. The tone of the meeting, especially from Mr. Chapman, was fractious and hostile.
54. I asked Mr. Chapman several questions, including why the Whites Point Quarry had been referred to the Joint Review Panel when the Comprehensive Study had just begun. Mr. Chapman refused to disclose what had changed that would precipitate a referral to the Joint Review Panel. He said, "You're in a Panel Review and we're not going to tell you why". I found this very troubling.
55. I later determined that the Minister of Environment's decision was made on August 7, 2003, following Minister Thibault's request of June 26, 2003. I then made many other inquiries about why the project had been switched, and never received a single response.
56. I made other inquiries. For instance, I asked for a copy of the letter from Minister Thibault to the Environment Minister, David Anderson. I was told I could not have it because of "cabinet confidentiality". However, the press had obtained the letter and a copy of the letter was even made available to the local Liberal candidate in the August 2003 provincial election. I only obtained the letter much later in the process, and from the Joint Review Panel.
57. Cheryl Benjamin, an environmental assessment officer at NSDEL who was also present at the meeting with Mr. Chapman, told me that the estimated time for a JRP process was 310 days.
58. In November 2004 I received the Draft Guidelines for the Preparation of the Environmental Impact Statement for the Whites Point Quarry Project. In the same month, I also received the Terms of Reference of the Joint Review Panel, which was supposed to establish the criteria for Bilcon's Joint Review Panel environmental assessment. While I was prepared to follow the Term of Reference, it shortly became apparent that the governments would deviate from the Terms of Reference.
59. I was also concerned to find that the scope of final EIS Guidelines had become much more onerous, difficult to follow and departed significantly from the Terms of Reference. I began to notice the tactics of delay and confusion being adopted to drag the process out by local opposition. As a result, I wrote to the JRP requesting a clear and concise framework for the Final EIS Guidelines.

60. As I explained on the first day of the Joint Review Panel hearings, I thought that the purpose of the EIS Guidelines was to set out the planning parameters over the Project as a whole, as well as what the Project is, where it is, how it is going to be conducted, and what the environmental effects are with respect to Bilcon's project. At the hearings, I explained that I thought that the EIS Guidelines are derived to some extent from standards and questions asked in this kind of context. As Bilcon's representative, I explained that I saw the EIS Guidelines as a framework to explain what Bilcon was going to do, why Bilcon was going to do it, what the processes were that Bilcon was going to undertake, what environment effects would come from those processes, how Bilcon would attempt to mitigate those effects, how Bilcon would monitor the effects, and what the residual effects would be from this process.
61. The EIS Guidelines were to set out the subjects that would need to be discussed throughout the entire process, and especially during the Joint Review Panel hearings. I found the EIS Guidelines were not easy to follow, which is why Bilcon restructured its EIS as it did. The subjects were raised and re-raised in various elements of the EIS Guidelines, and I found it difficult to have an EIS for Bilcon that was easy to follow and comprehend. I made best efforts to follow the outline of the Joint Review Panel's Guidelines as they were set out, but I can repeat that I had some difficulty in doing that.
62. In addition to the numerous Requests of Information, I was required to complete a Revised Project Description for Bilcon. I gave priority to submitting a Revised Project Description and sent that document to the Panel as quickly as possible.
63. The Joint Review Panel imposed several new criterion in the final EIS Guidelines, such as the inclusion of Loyalist, Afro-Canadian and Acadian views in its Traditional Knowledge analysis, which is normally only reserved for traditional knowledge from local aboriginal persons. The Joint Review Panel also imposed a reverse onus on Bilcon which it claimed was part of the precautionary principle. The precautionary principle was not mentioned in the Terms of Reference nor in the Draft EIS Guidelines.
64. Despite the surprising inclusion of these new criteria and the direction to prepare a revised project, I ensured that Bilcon addressed these factors as best it could.
65. I was encouraged repeatedly not to have legal advice and assistance. For example, the Joint Review Panel stated the following in its procedural guide:

**6.0 Informal Nature of Scoping Meetings**

The Panel encourages groups and individuals to speak and interact at these meetings on their own behalf, rather than through a lawyer. The scoping meetings will be informal and should not be viewed as courtroom proceedings.<sup>23</sup>

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<sup>23</sup> Whites Point Quarry and Marine Terminal Project Joint Review Panel Scoping Meeting Procedures, dated December 2, 2004. (*Buxton Exhibit 18*) (CP9522).

Further, in May 2007, the JRP forwarded to us a document "Procedures for Public Hearings", which stated that "Representation by legal council is generally discouraged",<sup>24</sup> and that "These procedures are intended to ensure that the public hearings take place in a fair and equitable manner, with maximum co-operation and courtesy"<sup>25</sup>

66. Throughout the JRP process, the level and scope of information requested kept changing, and while I complied with all information requests from the Joint Review Panel, they were needlessly onerous and always unexpected, and ever-changing. Although I felt that all information requested by the Joint Review Panel was provided, the level and scope of information required kept changing throughout the environmental assessment process.
67. This uncertainty made it extremely difficult for me to move forward with Bilcon's proposed application and I spent valuable time and resources on compiling responses to the Panel's seemingly never ending information requests.
68. I retained experts in each field required by the JRP for Bilcon. I managed the changing information requests and submitted a large and voluminous Environmental Impact Statement on April 24, 2006.<sup>26</sup>
69. By the end of the process, by the time I had responded to comments, from both the JRP and the regulators, I think that I did in fact encompass for Bilcon what the EIS Guidelines were *intended* to do, and to provide the information that was requested.
70. The Environmental Impact Statement encompassed seventeen volumes and was over 3,000 pages. It took me three and a half years to work on it. I retained 48 different experts to satisfy the EIS and its related materials. Before I could even submit Bilcon's EIS report, I was required to conduct a series of studies. I commissioned 35 studies in total, dealing with environmental, social and economic issues for the area.
71. Due to the sheer volume of the EIS, and the hard work and dedication to meeting the objectives of the EIS Guidelines, I was surprised when Dr. Fournier then questioned me on the first day of the Joint Review Panel hearings as to what I thought the EIS Guidelines were for. Further, Dr. Fournier criticized Bilcon's EIS report for having "many gaps in it" as well as informing the Joint Review Panel hearing attendees that there were "places within the EIS where there are deficiencies".<sup>27</sup>

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<sup>24</sup> Letter from Robert Fournier to Paul Buxton, with attached-Procedures for Public Hearings dated May 1, 2007. (*Buxton Exhibit 10*).

<sup>25</sup> Letter from Robert Fournier to Paul Buxton, with attached-Procedures for Public Hearings dated May 1, 2007. (*Buxton Exhibit 10*).

<sup>26</sup> Letter from Paul Buxton, Bilcon of Nova Scotia to Robert Fournier, Chair, dated April 25, 2006, noting that the EIS was shipped on April 24, 2006. (*Buxton Exhibit 20*).

<sup>27</sup> Joint Review Panel Public Hearing Transcript, Vol. 1, June 16, 2007. (*Buxton Exhibit 21*)

72. At the JRP hearings, Bilcon's experts were virtually ignored by the Joint Review Panel, who seemed to have already made up their mind about the project. I also found it troubling that the JRP demanded the full qualifications of Bilcon's experts whereas the JRP did not look for the qualifications of many of the individuals providing scientific views on behalf of groups opposed to the Whites Point Quarry.
73. Bilcon also expected that individuals or groups making presentations before the panel would submit their presentations 10 days before the hearings. Since the panel did not enforce this requirement, Bilcon was unable to prepare for questions of a highly technical nature that were posed to Bilcon without notice. Bilcon was also not provided an opportunity by the panel to respond in the following days, as it expected it would have the opportunity to do.
74. During the presentations, members of the gallery applauded comments that were very negative towards Bilcon. However, the Panel took no action.
75. Throughout the hearings, the Panel quickly became preoccupied with the effects of a type of explosive commonly used in quarries, ANFO. Not only is ANFO an everyday explosive derived from common fertilizer, but Bilcon proposed extra mitigation steps to ensure that the effects of using ANFO were negligible. I was surprised that this was a concern when Apex Super 400, which has worse effects to ANFO, was apparently used in the water at the nearby project of Tiverton Harbour.

#### **V. The JRP Final Report**

76. The JRP Final Report was released on October 26, 2007. In it the JRP recommended that the Whites Point Quarry project be rejected on the novel basis that it conflicted with "core values" of the Digby Neck area. Never, during the entire environmental assessment process, was I or any of Bilcon's experts required to address the concept of "core values". "Core Values" was never mentioned in the EIS Guidelines or the Terms of Reference.
77. The JRP Report also commented on the "cumulative effects" of approving the Whites Point Quarry would likely lead to other American companies wanting to come to the Digby Neck area. I was shocked by the overtly anti-American sentiment but also because Bilcon was never made aware of inquiries from American corporations to the Government of Nova Scotia seeking information on quarrying in Nova Scotia.
78. I was also surprised with the Panel's finding on the project's viability. The JRP appeared to ignore the information that I provided at the hearings and took to guesswork when it concluded that the project would not be economically viable.
79. For example, the JRP found that, because Bilcon had not been able to acquire the Whites Point Road, the project was not viable but I had expressly told the Panel at the hearings that Bilcon had designed the project without the use of the road.

80. In the JRP's Report on traditional knowledge, Bilcon was accused of not speaking to local fishermen in order to determine the depth of the water.<sup>28</sup> What the JRP had failed to realize was that I had supplied that information in the EIS. The data was very precise, using a side-scan sonar,<sup>29</sup> which is one of the most advanced methods to determine depth, in addition to hydrographic charts and soundings.<sup>30</sup> I had also supplied detailed photographs to the JRP.<sup>31</sup> Throughout, the hearings before the JRP, the Panel never raised the issue of the depth as a concern or directed a question to our team of experts. This is one of the many errors that I was unable to raise with the environmental ministers after the JRP Report was released.

## **VI. Discussion With Ministers**

81. After the JRP released its recommendation, I contacted Mark Parent, Nova Scotia's Minister of the Environment, to discuss whether he should accept the Joint Review Panel decision. I was eager to convey to Minister Parent our concerns about the unfair, flawed way the environmental assessment process had been conducted, and the many factual inaccuracies that were in the JRP's decision.

82. I attempted to tell Minister Parent that he did not have all the information that he needed before making a decision. The environmental assessment was a long and complicated process that spanned more than five and a half years. I told the Minister that I felt that it was of critical importance to all Nova Scotians that the decision be made only after the Minister had been properly apprised of all the facts. I told the Minister that I felt the Panel was not fair, and that the Report contains many errors, including its recommendations, the fact that its panel ignored the regulators including the Minister's own department and our own experts.

83. To my dismay, Minister Parent refused to discuss the Report. Minister Parent simply stated that he would be accepting it without any review or consideration.

84. Following Bilcon's repeated requests to meet with the Nova Scotia Minister, a meeting was set up with NSDEL Deputy Minister Vanstone for December 14, 2007, following Nova Scotia's decision. However, this meeting was indefinitely deferred by the Ministry

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<sup>28</sup> Joint Review Panel Report at paras. 52 and 55 (*Buxton Exhibit 22*)

<sup>29</sup> Environmental Impact Statement of the Whites Point Quarry and Marine Terminal Project, March 2006, s. 9.1.7, Environmental Management. (*Buxton Exhibit 23*). I understand that the entire one thousand page plus Environmental Impact Statement has been set out in the record of this arbitration as Investors' Schedule of Documents, Tab C-1.

<sup>30</sup> Environmental Impact Statement of the Whites Point Quarry and Marine Terminal Project, March 2006, s. 9.1.7, Environmental Management (*Buxton Exhibit 23*).

<sup>31</sup> Report prepared by Gordon Fader, *Bedrock And Surficial Geology, Digby Neck, Bay Of Fundy*, March 2005. (*Buxton Exhibit 24*).

before taking place.<sup>32</sup> No explanation was ever provided why either the Minister or Deputy Minister would not meet with us.

85. Bilcon also wrote to the federal minister of the Environment, John Baird, urging him to meet with us to hear our concerns. The Minister never responded, despite our repeated requests.

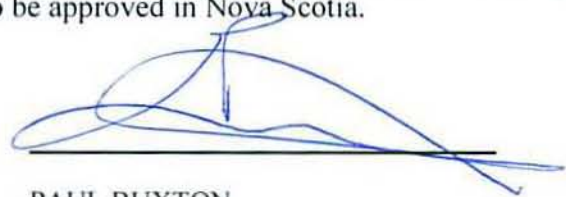
#### **VII. Benefit to the Community**

86. There would have been many benefits from our project. Once operational, it was our intention to employ local residents at the Whites Point Quarry. The anticipated hourly wage earned by local residents employed at the Whites Point Quarry would have been \$17.00/hour to start.<sup>33</sup> It was estimated that the Whites Point Quarry would also have provided approximately \$440,000 in municipal property taxes per year during the course of its 50 year life span.<sup>34</sup> The Whites Point Quarry would have provided long-term and well-paid employment to the local community and a stable source of tax income for the municipality.

#### **VIII. Harm to Bilcon**

87. I understand that the issue of damages to Bilcon has been reserved to another phase of these proceedings. As a result, I will not provide a great deal of comment at this time, but I think it is appropriate to comment on ongoing harm to the reputation to Bilcon and needless expense and costs that took place in this process.
88. Bilcon incurred significant costs throughout the five and a half years of the environmental assessment process. The treatment Bilcon received from the government, including the Joint Review Panel, damaged Bilcon's reputation in Nova Scotia. Given the unfair behavior of the JRP and the Government of Canada, Bilcon's business reputation and that of the Claytons has been severely affected. Following the hostile attitude left by the JRP, it would be extremely difficult, if not impossible, for any project involving Bilcon or the Claytons to be approved in Nova Scotia.

Dated: July 20 2011



PAUL BUXTON

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<sup>32</sup> Letter from Paul G. Buxton, Bilcon of Nova Scotia, to Nancy Vanstone, Deputy Minister (NSDEL), dated January 9, 2008, regarding a meeting that was scheduled with Bilcon. (*Buxton Exhibit 25*)

<sup>33</sup> Environmental Impact Statement, Section 9.3.9, at 83 (*Buxton Exhibit 23*)

<sup>34</sup> Environmental Impact Statement, Section 9.3.9, at 83 (*Buxton Exhibit 23*)