



49755

ELIOT SPITZER  
Attorney General

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
(212) 416-8461

PETER LEHNER  
Environmental Protection Bureau

May 7, 2002

EXPRESS MAIL

Dale Desnoyers, Esq.  
Chief, State Superfund & Voluntary Cleanup Bureau  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, New York 12233-5550

RECEIVED  
MAY 08 2002  
ENVIRONMENTAL  
ENFORCEMENT

*Mike: I recommend that you execute the enclosed order. Dale*

*Napanoch Paper Mill - CE*

Re: Napanoch Paper Mill Site Matter

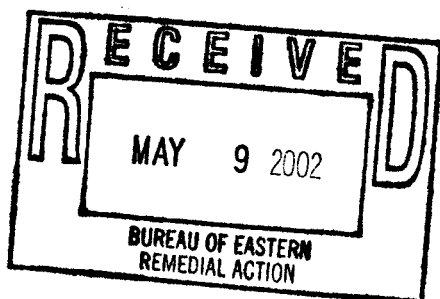
Dear Dale:

As we discussed, enclosed please find two copies of the executed Order on Consent, signed by the purchasers of the property in Napanoch. Also enclosed is the earlier Memo setting forth the terms of the settlement in this matter. This settlement was approved by DEC and the AG Office. Attached to the Order is a copy of the Deed Restrictions which were agreed. The actual deed reflecting the property at issue is not attached as we are resolving an issue about the exact terms of the deed.

As we discussed, would you have Mike O'Toole execute both copies of the Order and return it to my Office. I will hold the Order until the deed description is finalized, and the other components of the settlement are satisfied. This matter is currently in federal court litigation, and subject to certain court-ordered time limits. Therefore, could Mike sign the Order and return it to me by May 31. As I will be leaving for vacation, please give me a call by Friday if you have any questions. Thanks very much.

Sincerely yours,

ROBERT EMMET HERNAN  
Assistant Attorney General



MEMORANDUM

RECEIVED

MAY 08 2002

ENVIRONMENTAL  
ENFORCEMENT

TO: Dale Desnoyers, Esq.

FROM: Robert Emmet Hernan

RE: Settlement in Napanoch Case - **Approval required by Monday, March 11**

DATE: March 4, 2002

-----

As you will recall, this case involves a hazardous waste site which also has experienced a substantial oil spill. DEC spent over \$20 million to investigate and remediate the site, and a search by DEC consultants uncovered almost no PRPs who were still alive. We were able to collect \$65,000 from a company in Ohio who, at least arguably, had very limited exposure because of a subsidiary. We have sued the present owner (a dissolved corporation) and its former president (an Ellenville attorney) in the federal Northern District. Following a court-arranged mediation we were able to get the owner to agree to transfer title to a prospective purchaser.

We have tentatively accepted an offer from neighbors, the Kuyawamas (an artist and an investment banker), who will pay the State \$7,500 and the County \$5,000 and who have agreed to certain deed restrictions to preserve the open space values of the property (it's a beautiful piece of property along the Rondout Creek in Napanoch, Ulster County). The County has a \$75,000 tax lien, which is prior to any lien we might get through litigation.

The federal court defendant, James Barry, will execute a quit claim deed to the prospective purchasers from Longboat Inc., the dissolved company which still owns the site. The State, County, and prospective purchasers will fully release Mr. Barry and Longboat Inc.. The County will release the prospective purchasers. The State will settle with the prospective purchasers pursuant to an administrative Order on Consent, which will include their obligation to record a Deed Restriction. Once the documents are all signed and exchanged, the payments to the State and County will be made. Then the State will withdraw the lawsuit against Mr. Barry and the dissolved company, with prejudice.

This settlement is based on the approach to the case we developed several years ago. Despite substantial and prolonged efforts to get a public agency or non-profit entity interested in

taking the property for a public park, neither DEC, nor the County, Town, or land conservancies were interested.

Attached are copies of the Order on Consent, Declaration of Use Limitations and Restrictions, and Release, all of which you have already reviewed.

Please review and, if approved, forward to the appropriate management staff. Since I am under a second federal court order staying discovery in this action, time is of the essence. Could I get **final approval** by next **Monday, March 11, 2002**. Thanks.

**Website:** [www.dec.state.ny.us](http://www.dec.state.ny.us)

Hold until Dale  
gets back



Erin M. Crotty  
Commissioner

cc: R. Knizek

-----  
IN THE MATTER OF THE  
NAPANOCH PAPER MILL SITE  
TOWN OF WARWARSING,  
ULSTER COUNTY, NEW YORK

ADMINISTRATIVE ORDER ON CONSENT

BY: TADASUKE KUWAYAMA and  
PATRICIA KUWAYAMA,

INDEX NO.

Respondents.

-----

ORDER ON CONSENT

WHEREAS, the New York State Department of Environmental Conservation ("the Department") is responsible for the enforcement of Article 27, Title 13 of New York's Environmental Conservation Law ("ECL"), entitled "Inactive Hazardous Disposal Sites."

WHEREAS, the Department has responsibility for the investigation and remediation of the release or threatened release of hazardous substances on a 19-acre facility bounded on the south by Rondout Creek and on the north by NY Route 55 in Napanoch, Ulster County, New York, which Site is listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites and identified as the Napanoch Paper Mill Site # 356014 ("Site" or "Property"). A copy of the deed for the property is attached to Exhibit A.

WHEREAS, the Site was the subject of an investigation and remediation by the State of New York ("State") as a result of the disposal on and about the Site of hazardous wastes by persons other than the Respondents, which remediation is continuing;

WHEREAS, the State expended over twenty million dollars to investigate and remediate the Site;

WHEREAS, the clean-up of the Property by the State restored scenic and open space features and values to the Property;

WHEREAS, Respondents are the prospective purchasers of the Site and have agreed to conserve and preserve these scenic and open space values;

WHEREAS, Respondents have agreed to place these restrictions on the Property as part of a settlement with the State to resolve any potential liability of Respondents for the State's costs of investigation and remediation of the Site;

WHEREAS, this Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and Article 71, Title 27, as well as the Department's statutory authority to bring an action to recover its costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9607, as well as under §97-b of the State Finance Law.

WHEREAS, this Consent Order was negotiated and executed by the Department and Respondents without the admission or adjudication of any issues of fact or law, and Respondents further consent to and will not contest the Department's jurisdiction to issue this Consent Order or to implement or enforce its terms.

WHEREAS, Respondents waive their right to a hearing herein as provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Respondents agree to conserve and preserve the scenic and open space values of the Site in accord with the Declaration of Use Limitations and Restrictions attached hereto as Exhibit B, and further agree to record said Declaration in Ulster County within thirty days of receiving the quitclaim deed to the Property.

II. A. Respondents shall make payment to the Department in the amount of SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$7,500). Said payment shall be received by the Department within thirty (30) days of the effective date of this Order.

B. Payment shall be made by certified check payable to the "New York State Department of Environmental Conservation". Payment shall be sent to:

Donna Weigel, Director  
Bureau of Program Management  
N.Y.S.D.E.C.  
625 Broadway  
Albany, NY 12233-7010

Respondents shall send a copy of the check simultaneously with the payment to Dale Desnoyers, Esq., NYSDEC, 625 Broadway, Albany, NY 12233-5550, and to Robert Emmet Hernan, Esq., Assistant Attorney General, Environmental Protection Bureau, New York State Department of Law, 120 Broadway, New York, New York 10271.

III. This Order shall apply to and be binding upon the Department and Respondents, and their successors and assigns. Each signatory to this Order represents that he or she is fully

and legally authorized to enter into the terms and conditions of this Order and to bind the party represented by him or her.

IV. Respondents hereby consent to the entry upon the Site by any duly designated employee, consultant, contractor, or agent of the Department or other State agency for purposes of inspection, sampling, testing, remedial action, or other activity necessary for the implementation of the remedial program for the Site, pursuant to ECL §27-1309 and §12-178 of the Navigation Law, as well as under any other applicable authority of law. Respondents further agree to notify all potential successors in title to the Site property of the Department's ongoing remedial activities at the Site and of the Department's authority to do so under ECL Article 27, Title 13.

V. For the purposes of this Order, all terms, other than those terms expressly and particularly defined herein, shall be defined in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 et seq., the ECL, the New York State Finance Law, and the regulations promulgated pursuant to these laws; or, in the absence of a statutory or regulatory definition, such terms will be construed in accordance with their commonly attributed meaning.

VI. The failure of Respondents to comply with any provision of this Order shall be a violation of this Order and the ECL.

VII. In consideration for Respondents' payment to the Department and agreement to restrict the uses of the subject property, as set forth in Exhibit B, and except as specifically provided in Paragraphs VIII and IX *infra*, the Department covenants not to sue or take any civil, judicial or administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607, or Article 27, Title 13 of the ECL, or any other federal, state or common law, for the costs incurred by the Department with respect to the Site, or any matter addressed by this Order. This covenant not to sue remains in effect as long as Respondents remain in compliance with this Order.

VIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights which include, but are not limited to the following to perform further response actions at the Site or cause potentially responsible parties to perform such actions; to seek natural resource damages resulting from any release or threat of release of hazardous substances or the disposal of hazardous wastes at the Site from any potentially responsible party other than Respondents; to seek recovery of costs from any persons other than Respondents; and to prosecute any criminal liability associated with the Site.

IX. Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, any rights it may have to institute proceedings or to issue an administrative order seeking to compel Respondents to perform response actions relating to the

Site, or any rights it may have to institute judicial proceedings to reimburse the State for additional costs of response if:

(i) conditions at the Site, previously unknown to the State, are discovered after the Effective Date; or,

(ii) information, in whole or in part previously unknown to the State, is received after the Effective Date;

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action selected for the Site is not protective of human health or the environment. For purposes of this Provision, previously known conditions at the Site and previously known information include all conditions and information known to the State as of the Effective Date including, but not limited to, all conditions and information considered or relied upon by DEC or contained or submitted for inclusion in the DEC Administrative Record, attached to the Record of Decision (ROD) for the Site and attached hereto as Exhibit C.

X. Nothing herein shall be construed as an assumption on the part of Respondents of any liability, now or for the future, with respect to the environmental conditions or any other civil or criminal liability with respect to the Site.

XI. With respect to the claims that the Department has covenanted not to pursue against Respondents, as set forth in paragraph VII above, Respondents are entitled to such protection from contribution actions or claims as is provided by CERCLA § 113(f)(2), 42 U.S.C. §9613(f)(2).

XII. Nothing herein shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order.

XIII. This Order and its Exhibits constitute the entire agreement of the parties herein and shall only be modified upon the written Consent of all parties.

XIV. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, whether at common law or granted pursuant to statute or regulation.

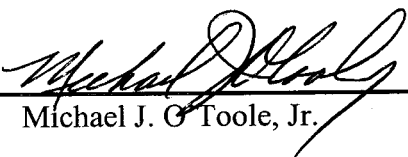
XV. Nothing herein shall be deemed to diminish or restrict any right of Respondents to seek indemnification from any third party as may be deemed appropriate.

XVI. The effective date of this Consent Order shall be the day it is signed by the Commissioner or his duly appointed designee, or the Respondents, whichever is later.



DATED: Albany, New York  
*May 31*, 2002

ERIN M. CROTTY, Commissioner  
New York State Department  
Of Environmental Conservation

BY:   
Michael J. G. Toole, Jr.

For purposes of this Order only, Respondents agree to pay to the Department the amount of seven thousand and five hundred dollars (\$7,500) and hereby consent to the issuing and entering of this Order, waive Respondents' right to a hearing herein as provided by law, and agree to be bound by this Order.

By: Tadasuke Kuwayama  
Tadasuke Kuwayama  
By: Patricia Kuwayama  
Patricia Kuwayama

Date: April 23, 2002

STATE OF NEW YORK )  
 ) s.s.:  
COUNTY OF New York )

<sup>above</sup> On the 23rd day of April, in the year 2002, before me, the undersigned, personally appeared Tadasuke & Patricia Kuwayama personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



ROBERT J. FISHER  
Notary Public, State of New York  
No. 31-4999578 Albany  
Qualified in New York County  
Commission Expires July 27, 10-2002

**DECLARATION OF USE LIMITATIONS AND RESTRICTIONS**

This Declaration of Use Limitations and Restrictions is made this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by TADASUKE KUWAYAMA and PATRICIA KUWAYAMA ("Declarants"), having an address of \_\_\_\_\_.

WITNESSETH:

WHEREAS, Declarants are the owners of a parcel of land located in the County of Ulster, in the State of New York, more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Property");

WHEREAS, the Property was the subject of an investigation and remediation by the State of New York ("State") as a result of the disposal on and about the Property of hazardous wastes by persons other than the Declarants, which Property was identified as Inactive Hazardous Waste Disposal Site No. 356014;

WHEREAS, the State expended over twenty million dollars to investigate and remediate the Property;

WHEREAS, the clean-up of the Property by the State restored scenic and open space features and values to the Property;

WHEREAS, Declarants are committed to conserving and preserving these scenic and open space values;

WHEREAS, Declarants have agreed to place restrictions on the Property as part of a settlement with the State to resolve any potential liability of Declarants for the State's costs of investigation and remediation;

WHEREAS, this Declaration of Use Limitations and Restrictions on the Property shall be duly recorded in the Office of the Clerk of Ulster County pursuant to §291 of the New York State Real Property Law;

**NOW, THEREFORE**, based on the facts recited above and on mutual covenants and agreements, and other good and valuable consideration, Declarants do hereby agree to the use of the Property and restrictions thereto as set forth below, which restrictions shall run with the land and are binding on Declarants and their successors, assigns and heirs, and shall not terminate

except pursuant to agreement between Declarants, their successors, assigns or heirs, and the State.

1. Purpose: The purpose of this Declaration is to restrict the use and development of the Property in such ways as to conserve and preserve the scenic and open space values of the Property.
2. Restrictions on Use: In order to conserve and preserve the scenic and open space values of the Property, the following uses shall be prohibited upon or within the Property, except to the extent permitted by Paragraph 3 hereof:
  - (a) Any commercial, industrial or residential uses;
  - (b) The division or subdivision of the Property;
  - (c) The construction, erection, or replacement of any buildings, roads, roadways, signs (other than informational or directional signs) billboards, satellite dishes, docks or other structures or improvements of any kind or nature whatsoever on or over the Property except solely the Permitted Improvements as provided for under subparagraph 3(a) hereof;
  - (d) The dumping or storage of chemical wastes or other hazardous waste materials, ashes, trash, garbage, sawdust and/or any other type of waste on any portion of the Property, except such storage of the aforementioned material as may be normally and reasonably incidental to uses permitted hereunder;
  - (e) Dredging, mining, excavation, timbering, harvesting trees, filling or any other use of the Property which is detrimental to drainage, water quality, flood control or the fish and wildlife attributes of the Property or the adjacent Rondout Creek or which would result in the release of hazardous substances;
  - (f) The use of toxic chemicals, including, without limitation, pesticides and herbicides, on the Property, except in connection with interior operation and maintenance of the Permitted Improvements or as permitted by the New York State Department of Environmental Conservation (the "DEC") or any other governmental agency having jurisdiction over the Property and in accordance with all applicable governmental laws and regulations;
  - (g) The use of off-road motorized vehicles, other than on the roads designated for such use on the Property, including, without limitation, trucks, automobiles, all-terrain vehicles and motorcycles, except as may be required for emergency purposes or for necessary actions of Declarants for

the construction and maintenance of a Permitted Improvement.

3. Retained Rights of Declarants: Except as provided above, Declarants reserve and retain all rights of ownership in the Property, to the extent such rights are exercised in a manner which is not inconsistent with the conservation and preservation of its scenic and open space values, including but not limited to:
  - (a) The right to renovate, repair and maintain or remove the following existing structures and facilities: stone walls and fences on the Property; utility corridors or rights of way, including lines for electricity, natural gas, water, sewer and telecommunication transmission, so long as such action does not result in the release of hazardous substances;
  - (b) The right to construct, install and maintain the following Permitted Improvements as enhancements to the Property:
    - (i) The structure now existing on the property consisting of foundation, four walls and no roof, may be rehabilitated, reconstructed and modified utilizing the present dimensions to create an owner-utilized art studio of no more than three thousand square feet. Said studio will not be and may not be rented out and will be utilized solely for the creation and development of artistic projects.
    - (ii) Additionally, the deteriorated foundation of a former manufacturing structure will be made safe by collapsing and/or filling in said foundation with surrounding soil.
    - (ii) The only other structures that are permitted are those structures that are found in or near a garden such as a gazebo or storage shed, not including any residence.
  - (c) The right to manage and improve the land and vegetation by landscaping, including planting, cultivation, trimming and removal of grass, trees, shrubs and flowers for the purpose of enhancing the scenic and open space values of the Property.
4. The construction, repair and maintenance of any Permitted Improvement and any use of the Property shall be undertaken in a way which mitigates, to the greatest

extent practicable, any adverse effects on any stream, wetland, pond, lake or other body of water located within 100 feet of such improvement.

5. No Public Access and/or Use: No right of access or use by the general public to any portion of the Property is conveyed or shall be deemed conveyed by this instrument.
6. Enforcement: The Declarant intends that The People of the State of New York, acting by and through their Commissioner of Environmental Conservation or the New York State Attorney General, shall be the beneficiaries of the terms and conditions of this Declaration and may enforce this Declaration by any action or proceeding.
7. Lease or Conveyance: Any lease or conveyance of the Property, or any portion thereof, shall incorporate this Declaration therein.
8. Notice of Conveyance: Declarants shall notify the State Department of Environmental Conservation at least 90 days before any lease or conveyance of the property, or of any interest in any portion of the property.

Date: April 23, 2002

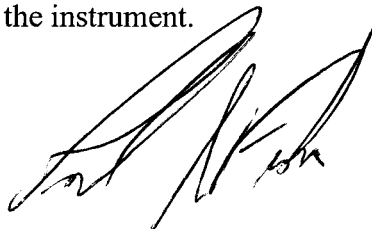
By: Tadasuke Kuwayama  
TADASUKE KUWAYAMA

Date: 4/23/02

By: Patricia Kuwayama  
PATRICIA KUWAYAMA

STATE OF NEW YORK    )  
  ) s.s.:  
COUNTY OF New York    )

<sup>above</sup> On the 23rd day of April, in the year 2002, before me, the undersigned, personally appeared Tadasuke & Patricia Kuwayama, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



ROBERT J. FISHER  
Notary Public, State of New York  
No. 31-4999578 Albany  
Qualified in New York County  
Commission Expires July 27, 2002

**NAPANOCH PAPER MILL SITE**  
**ID: 3-56-014**

**ADMINISTRATIVE RECORD**

1. Remedial Investigation/Feasibility Study Work Plan, Napanoch Paper Mill Site, Engineering Science, December 1992.
2. Remedial Investigation - Work Plan Addendum No. 1, Napanoch Paper Mill Site, Engineering Science, March 1993.
3. Remedial Investigation - Work Plan Addendum No. 2, Napanoch Paper Mill Site, Engineering Science, May 1993.
4. Remedial Investigation Data Report, Napanoch Paper Mill Site, Engineering Science, September 1993.
5. Remedial Investigation/Feasibility Study, Napanoch Paper Mill Site, Engineering Science, March 1994.
6. Proposed Remedial Action Plan, Napanoch Paper Mill Site, New York State Department of Environmental Conservation, February 1994.