

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BUFFALO SOUTHERN RAILROAD, INC.,

Plaintiff,

- against -

VILLAGE OF CROTON-ON-HUDSON; GREGORY J. SCHMIDT, as Mayor of the Village of Croton-on-Hudson; DANIEL O'CONNOR, P.E., as Engineer and Building Inspector for the Village of Croton-on-Hudson; RICHARD F. HERBEK, as Manager of the Village of Croton-on-Hudson; THOMAS P. BRENNAN, as Trustee on the Village Board of Trustees; CHARLES A. KANE, as Trustee on the Village Board of Trustees; ANN GALLELLI, as Trustee on the Village Board of Trustees; LEO A.W. WIEGMAN, as Trustee on the Village Board of Trustees; CHRIS KEHOE, as member of the Village Planning Board; VINCENT ANDREWS, as member of the Village Planning Board; FRANCÈS ALLEN, as member of the Village Planning Board; ROBERT LUNTZ, as member of the Village Planning Board; KATHLEEN RIEDY, as member of the Village Zoning Board of Appeals; RHODA STEPHENS, as member of the Village Zoning Board of Appeals; RUTH WAITKINS, as member of the Village Zoning Board of Appeals; WITT BARLOW, as member of the Village of Zoning Board of Appeals; and PAUL ROLNICK, as member of the Village Zoning Board of Appeals,

AFFIDAVIT

Civil Action No.
06 CIV 3755

Judge McMahon

Defendants.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

CHARLES A. KANE, being duly sworn, deposes and says:

1. I am employed as a Supervisor of Metro North Commuter Railroad, and my

office is located at Harmon Shop, near the Croton-on-Hudson train station in Croton-on-Hudson, New York. In addition, since April 2004, I have served as a Trustee on the Croton-on-Hudson Village Board of Trustees. As such, I am a named defendant in this action.

2. I am submitting this affidavit in opposition to Buffalo Southern Railroad, Inc.'s application for a temporary restraining order and other injunctive relief. I am familiar with all matters stated in this affidavit from my personal knowledge and observations.

3. My Metro North office is located directly across the railroad tracks from 1A Croton Point Avenue, the property that is the subject of the above captioned action. From the Metro North office, I have a clear view of the property, including the 1600 foot piece of railroad track on the westerly border of the site.

4. At least twice a day, I pass the entrance to the 1A Croton Point Avenue facility. In addition, approximately twice a day, I cross the bridge on Croton Point Avenue and, from that vantage point, which is elevated, I have a clear overview of the entire 1A Croton Point Avenue site.

5. Because of the long-standing controversy over the use of 1A Croton Point Avenue as a waste transfer facility, since I became a trustee in 2004, I have always paid close attention to what is going on at the 1A Croton Point Avenue site.

6. Since Metro Enviro ceased operations and completed its clean up of the 1A Croton Point Avenue site in the summer of 2005, up until May 18, 2006, I have not seen any train cars at all on the 1600 foot piece of railroad track. I have not seen train cars

coming onto the track nor departing from the track. In addition, during that same period, I have not seen any trucks coming onto or leaving 1A Croton Point Avenue.

7. Since Metro Enviro left the site, I have not seen any activity at all at the site, other than, on a daily basis, a single automobile parked at the weigh station gate and one person, who appears to be guarding the site.

8. Finally, I have seen no signs marked "Buffalo Southern Railroad," or anything similar, at the site itself or at the road leading to the site.


Charles A. Kane

Sworn to before me this 19th
day of May, 2006


Notary Public

MARGARET KEESLER
Notary Public, State of New York
No. 01KE5050950
Qualified in Westchester County
Commission Expires October 23, 2009