

ESTATE NO. 11-248031VA/04

COURT NO. B041943

VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
NAPIER ENVIRONMENTAL TECHNOLOGIES INC.**

PROPOSAL

OF

NAPIER ENVIRONMENTAL TECHNOLOGIES INC.

DATED FOR REFERENCE APRIL 29, 2005

**MADE PURSUANT TO PART III DIVISION 1 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED**

**ARTICLE I
DEFINITIONS & INTERPRETATION**

1.1 DEFINITIONS

In this Proposal, including the attached schedules:

“**Approval Order**” means the court order made in the Insolvency Proceeding approving the Proposal and directing the implementation of the Proposal.

“**Insolvency Proceeding**” means the proceeding commenced by the Company under the BIA in Action No. 246135 VA/04 in the Vancouver Registry of the Court.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended.

“**Business Day**” means a date other than a Saturday, Sunday or statutory holiday in British Columbia.

“**CRA**” means Canada Revenue Agency

“**Classes**” means the two classes comprising of the Secured Creditors and the General Creditors.

“**Company**” means Napier Environmental Technologies Inc.

“**Court**” means the Supreme Court of British Columbia.

“**Creditor**” means a person having a Provable Claim.

“**Definitive Proposal**” means a further Proposal to be filed by Napier with specific terms that will provide for dividend payments to the General Creditors.

“**Filing Date**” means November 3rd, 2004 the date when the Notice of Intention to File a Proposal was filed.

“**General Creditors**” means those Creditors of the Company who have a Provable Claim but do not hold a registered and valid security interest, mortgage, charge or encumbrance in the assets or property of the Company, as at the Filing Date.

“**Implementation Date**” means the first Business Day after the date the Court approves the Definitive Proposal.

“**Meeting**” means the meeting of the Classes to be held pursuant to Section 51(1) of the BIA for the purpose of considering, and if thought fit, voting to approve the Proposal, as same may be amended at any such Meeting, and agreeing to the compromise and arrangement constituted thereby, and any adjournment thereof.

“**Post Filing Creditor Claims**” means all claims of Post Filing Creditors for amounts owed to them arising after the Filing Date that are not made in respect to an obligation incurred prior to the Filing Date which is payable after the Filing Date.

“**Post Filing Creditor**” means any person who has supplied goods or services to or who has an entitlement to receive sales or excise taxes, source deductions or assessments and premiums from the Company arising subsequent to the Filing Date in relation to any unpaid amounts relating to such Post Filing Creditor Claims.

“Preferred Creditor” means all creditors entitled to priority over the General Creditors pursuant to Section 136 of the BIA.

“Proof of Claim” means the prescribed form of document required under the BIA to evidence the Provable Claim of a Creditor under Part III of the BIA prior to the date of the Meeting.

“Proposal” means this Proposal among the Company and the Creditors, as from time to time amended, modified or supplemented pursuant to an order of the Court, or pursuant to an agreement among the Company and any of the Creditors or Class, as provided for herein or pursuant to any Meeting of the Classes.

“Provable Claim” means a claim for an amount alleged by a person to be owed to it, or any obligation, enforceable right, duty or liability, contingent or otherwise, (including any claim whether contingent or accrued on behalf of Her Majesty the Queen in right of the Dominion of Canada or any Province or any municipality), or any cause of action against the Company or its respective assets and property calculated either as at the Filing Date or in the case of claims under executory contracts arising subsequent to the Filing Date, or claims arising after the Filing Date in respect of obligations incurred prior to the filing date, provided that a Provable Claim shall not include the amount due to a Post Filing Creditor in respect of Post Filing Creditor Claims.

“PPSA” means the *Personal Property Security Act* of British Columbia.

“Restructuring and Refinancing Process” means the process commenced by the Company that will ultimately result in either:

- The sale of all or part of the business;
- An arrangement or joint venture with a strategic partner; and/or,
- An investor providing working capital and equity to Napier.

“Secured Creditor” means those creditors holding perfected security interests against the Company registered in the Personal Property Registry or holding a mortgage, charge or encumbrance on the assets or property of the Company, as at the Filing Date but excludes I.C.T.C. Investments Corporation, to whom this proposal is not being made.

“Trustee” means Campbell Saunders Ltd., appointed as Trustee of the Proposal in the Insolvency Proceeding.

1.2 HEADINGS

The division of the Proposal into Sections and the insertion of headings are for convenience only and do not form part of the Proposal and will not be used to interpret, define or limit the scope, extent or intent of the Proposal.

1.3 SECTION REFERENCE

Unless otherwise specified, references in the Proposal to “Sections” and “Schedules” are to sections of and schedules to the Proposal.

1.4 STATUTORY REFERENCE

Unless otherwise specified, each reference to a statute is deemed to be a reference to that statute and to the regulations made under that statute, as amended or re-enacted from time to time.

1.5 NUMBER AND GENDER

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 CURRENCY

All references to amounts of money means lawful currency of the Dominion of Canada unless otherwise expressly indicated. All Proofs of Claim submitted by Creditors in U.S. dollars will be converted to Canadian dollars at the rate of exchange applicable at the Filing Date.

ARTICLE II PURPOSE AND EFFECT OF THE PROPOSAL

2.1 PURPOSE OF THE PROPOSAL

The purpose of the Proposal is to permit the Company to settle payment of its liabilities arising both before and after the Filing Date and to compromise the indebtedness owed to Creditors of the Company on a fair and equitable basis.

2.2 TRUSTEE UNDER THE PROPOSAL

Subject to the provisions of the BIA the Trustee shall act as the administrator for all purposes connected with the Proposal including management of the claims process, administration of the Meeting and any adjournments thereto and distribution of dividends to Creditors.

ARTICLE III CREDITOR CLASSES AND PRIORITY OF PAYMENTS

3.1 CLASSES OF CREDITORS

There will be two Classes of Creditors for the purpose of considering and voting upon the Proposal consisting of:

- (a) the Secured Creditors;
- (b) the General Creditors.

3.2 PAYMENT TO THE SECURED CREDITORS

Secured Creditors of the Company shall be paid in accordance with the present arrangements existing between the Company and the holders of the secured claims, as amended from time to time, or as may be arranged in the future between the Company and the holders of the secured claims, notwithstanding the filing of the Notice of Intention to Make a Proposal and the filing of this Proposal.

3.3 PAYMENTS TO CRA

CRA should be paid directly from the Company in respect of any amounts due Her Majesty the Queen in Right of Canada or a Province of a kind which could be subject to a demand under sub-section 224(1.2) of the *Income Tax Act* or under any substantially similar provision of provincial legislation and that were outstanding at the time of the Filing Date. These payments shall be made within six (6) months of the Approval Order.

3.4 PREFERRED PAYMENTS IN PRIORITY TO ALL OTHER CREDITORS UNDER THE AMENDED PROPOSAL

The Trustee shall make the following preferred payments from the amounts paid to the Trustee pursuant to Article 5.4 before making any distribution to the General Creditors:

1. Provision for payment of all proper fees, expenses and legal costs (the “Trustee’s Fees”) of the Trustee, of and incidental to the proceedings arising in the Bankruptcy Proceeding together with such fees of the Trustee incidental to and arising from the preparation of this Proposal shall be paid in full in priority to the claims of all Creditors. All payments of the Trustee’s fees are subject to taxation.
2. That payment of the claims of employees as set out in Section 136(1)(d) of the *Bankruptcy and Insolvency Act* shall be paid forthwith upon Court Approval of this Proposal or upon the Sale of Business.
3. All other preferred claims are to be paid in priority to all claims of General Creditors pursuant to sections 60(1) and 136 of the BIA.

3.5 PAYMENT TO THE GENERAL CREDITORS

In addition to any amounts that may be made as a result of the Restructuring and Refinancing Process described in Article IV, the Company will make monthly payments to the Trustee in the amount of \$15,000 per month until such time as a Definitive Proposal is filed.

Notwithstanding the foregoing if a General Creditor’s claim is less than \$1,000 or if the General Creditor is prepared to reduce its claim to \$1,000, the Trustee shall pay the said claims in full within 90 days of the approval of this Proposal from the payments being made to the Trustee pursuant to paragraph 5.4 hereof.

3.6 EFFECT ON CREDITORS AND POST-FILING CREDITORS

Effective as of the Implementation Date, upon satisfaction of the claims of the General Creditors by payment to the Trustee in the manner contemplated by the Definitive Proposal and payment to the Post-Filing Creditors in the manner described in Article 5.1 of this Proposal, the Company shall be released from all claims, liabilities and obligations to all General Creditors and Post-Filing Creditors. Further, effective as of the Implementation Date, upon satisfaction of the claims of the General Creditors by payment to the Trustee in the manner contemplated by the Definitive Proposal and payment to the Post-Filing Creditors in the manner described in Article 5.1 of this Proposal, any claims against directors of the Company that arose before the Filing Date regardless of the date of crystallization of such claim, and that relate to the obligations of the Company which relate to the time period before that date, where the directors are by law liable in their capacity as directors for payment of such obligations, shall be deemed to be fully satisfied by the terms of the Definitive Proposal and shall not be enforceable against those directors in law or in equity;

ARTICLE IV

THE RESTRUCTURING AND REFINANCING PROCESS

4.1 THE RESTRUCTURING AND REFINANCING PROCESS

The Company will continue the Restructuring and Refinancing Process until such time that, in the opinion of the Company and the Trustee, there is an agreement to either sell or refinance the business, that is in the best interest of the General Creditors and that the Company and Trustee believe will form the basis of a viable proposal.

At that time, and no later than 120 days from Court Approval of this Proposal, the Company will file a Definitive Proposal or, if there is no agreement within 120 days, call a creditors meeting to approve an extension of time to file a Definitive Proposal. Notwithstanding the foregoing, the Inspector(s) appointed pursuant to the provision hereof, at the request of the Company with the approval of the Trustee, may authorize one extension of the 120 period, not exceeding 90 days.

The Trustee will monitor the operations of the Company and the status of the Restructuring and Refinancing Process and report to the Inspectors on a monthly basis.

In the event that the Definitive Proposal involves a sale of all or substantially all of the assets of the Company to a proposed purchaser, (the "Purchaser") the Trustee is authorized to apply to the Court for a Vesting Order, vesting the assets of Napier in the Purchaser.

The Definitive Proposal shall provide that Golden Crane Management Company Inc. in its capacity as Chief Restructuring Officer, shall be indemnified and saved harmless by the Company from any and all claims in any way arising out of or relating too its engagement and duties as Chief Restructuring officer and shall further provide that, except with prior leave of the Court, on notice to the Chief Restructuring Officer, no proceedings shall be commenced against the Chief Restructuring officer, its employees, Officers, Directors or assigns.

ARTICLE V
TIMING OF PAYMENTS UNDER PROPOSAL

5.1 PAYMENTS TO POST FILING CREDITORS

The Company shall pay Post Filing Creditors in the ordinary course of business, or in accordance with present arrangements existing between the Company and the Post Filing Creditor, as amended from time to time or as may be arranged in the future between the Company and the Post Filing Creditor.

5.2 PAYMENTS CRA

Amounts owing to CRA in accordance with Article 3.3 will be paid directly by the Company within six months of the date of Court Approval of this Proposal.

5.3 SECURED CREDITORS

Secured creditors will be paid by the Company in accordance with the present arrangements existing between the Company and the Secured Creditors.

5.4 PAYMENTS TO TRUSTEE

The Company shall make the following payments to the Trustee:

- a) \$15,000 per month commencing 30 days after Court Approval of this Proposal and continuing until a Definitive Proposal is filed; and
- b) \$16,050 paid to the Trustee on November 23rd, 2004

ARTICLE VI
PAYMENT OF DIVIDENDS

6.1 DIVIDENDS TO PREFERRED CREDITORS

Dividends to Preferred Creditors shall be paid in accordance with the terms of the Definitive Proposal.

6.2 DIVIDENDS TO GENERAL CREDITORS

Interim dividends to the General Creditors will be paid in accordance with the terms of the Definitive Proposal.

6.3 SUPERINTENDENTS LEVY

A Superintendent levy shall be deducted from and paid on all dividends made by the Trustee to the Preferred and General Creditors.

**ARTICLE VII
MEETING OF THE CREDITORS**

7.1 GENERAL

At the Meeting of the Creditors held to consider this Proposal the Creditors may appoint one or more but not exceeding five Inspectors under this Proposal whose duties will be restricted to the following:

- (a) to advise the Trustee in connection with its actions under this Proposal or any amendment thereto as the Trustee may, from time to time, request;
- (b) to advise the Trustee concerning any dispute which may arise as to the validity of claims of creditors under this Proposal;
- (c) to advise the Trustee in respect of such other matters as may be referred to the Inspectors by the Trustee;
- (d) if in the opinion of a majority of the Inspectors it is in the interest of the Creditors that the time for payment of their Provable Claims by cash be extended, the inspectors will be entitled, without further reference or notice to the Creditors, to extend the time for payment of their Provable Claims;
- (e) to provide such advice to the Trustee as the Inspectors deem appropriate to assist Debtor to formulate the Definitive Proposal; and
- (f) To authorize the extension of the time within which the Definitive Proposal must be filed in accordance with s.4.1 hereof.

That in the event that no Inspectors are appointed under this Proposal, the Trustee shall be entitled to take advances toward its charges for services rendered pursuant to this Proposal from the funds paid to the Trustee pursuant to Paragraph 5.4 herein and that all advances so taken by the Trustee shall be subject to taxation by the Supreme court of British Columbia upon completion of the Definitive Proposal

The Trustee, and the Inspectors, should any be appointed, shall be exempt from all personal liability in fulfilling any duties or exercising any powers conferred upon them by this Proposal or generally in carrying out of the terms of this Proposal by wrongful act, default or neglect.

Upon payment to the Trustee of all amounts as provided in Article V, this Proposal shall be fulfilled and the Creditors shall have no further claims against the Company.

7.2 MEETING

The Meeting shall be conducted in accordance with Division 1 – General Scheme for Proposals of the BIA.

7.3 VOTING

Except as provided in Paragraph 7.4, for the purposes of voting as a member of the Classes, each Creditor shall have one vote for the purposes of determining a majority in number and each Creditor shall be entitled to one vote for each \$1.00 of its Provable Claim as allowed by the Company.

7.4 PROXIES AND VOTING LETTERS

Creditors will be entitled to vote at the Meeting by proxy or voting letter. The particulars with respect to voting by proxy or voting letter will be detailed in the Proof of Claim and will be binding upon all Creditors.

7.5 ADJOURNMENT OF MEETING

The Chair of the Meeting may in his or her discretion adjourn the Meeting upon such terms as are considered appropriate by the Chair upon notice to those persons present at the Meeting for the purposes of considering amendments to the Proposal contemplated in Article VIII.

ARTICLE VIII AMENDMENTS AND MODIFICATIONS

8.1 AMENDMENT OF PROPOSAL

The Company reserves the right, with the consent of the Trustee, to amend the Proposal at any time and re-submit it to the Creditors and the Proposal may be amended among the Company and the Classes at any Creditor meeting.

8.2 MODIFICATION OF PROPOSAL

After the Creditor Meeting, the Proposal may be modified from time to time:

- a) if the amendment is considered by the Trustee and the Inspectors to be non-substantive in nature, with the approval of the Trustee and the majority of the Inspectors;
- b) upon a vote conducted by the Trustee at a further meeting of Creditors and upon Court Approval;
- c) by the Court at any time on application of the Company or the Trustee and upon notice to those determined by the Company to be directly affected by the proposed modification, whether a Creditor or not.

8.3 WAIVERS

Any provision of the Proposal may be waived, with the consent of the Trustee, by a Creditor or the Class.

ARTICLE IX APPLICATION FOR FINAL ORDER

9.1 APPLICATION FOR FINAL ORDER

Upon the conclusion of the Meeting if the Proposal has been approved by the Classes by the requisite percentages in relation both to numbers of Creditors and dollar amounts of Provable Claims of Creditors, the Company will forthwith apply to the Court for the Approval Order.

9.2 CONTINUATION OF THE STAY OF PROCEEDINGS

The stay of proceedings provided for in Section 69.1(1) of the BIA will be continued in full force and effect save as is expressly provided herein.

9.3 COMPROMISE OF INDEBTEDNESS

Until such time as a Definitive Proposal is filed and accepted by the requisite number of Creditors, approved by the Court and payment to the Creditors as contemplated in the Definitive Proposal, there will be no compromise of indebtedness by the Creditor.

ARTICLE X GENERAL

10.1 FURTHER ACTIONS

The Company will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Proposal to give effect to the transactions contemplated hereby.

10.2 NOTICES

All notices, Proofs of Claim, and payments required or permitted or desired to be made pursuant to the Proposal shall be in writing and shall be delivered personally or by telecopy or mail by regular or registered or certified mail, return receipt requested, to the Company at the following address:

*c/o Campbell, Saunders Ltd.
Trustee of Napier Environmental Technologies Inc.
Under the Proposal
#1000 – 570 Granville Street
Vancouver, B.C.
V6C 3P1*

Attention: David A. Gray

Telephone: (604) 915-5551
Facsimile: (604) 915-5561

And if to a Creditor or Claimant, at its address set forth in the last Proof of Claim deposited with the Company.

10.3 DATE AND REFERENCE

The Proposal may be referred to as being the Proposal of the Company dated for reference March 11th, 2005.

10.4 SUCCESSORS AND ASSIGNS

The Proposal is binding upon the Company, the Creditors, the Claimants and their respective heirs, executors, administrators, successors and assigns.

DATED at the City of Vancouver, Province of British Columbia this 11th day of March, 2005.

NAPIER ENVIRONMENTAL TECHNOLOGIES INC.

Per: _____
Authorized Signatory