



Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement, de la
Protection de la nature et des Parcs

Program Approval

Sections 10, 132 and 136 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19

Program Approval Number: **PA202001SWR**

This Program Approval is issued to:

Nortel Networks International Corporation (hereafter "**NNIC**")

Part 1: Definitions

For the purposes of this Program Approval, the interpretation of all terms shall be the same as those contained in the legislation and the regulations made thereupon, unless defined below:

"Approval" means this Program Approval, as may be amended.

"City" means the Corporation of the City of London.

"Contaminant" means, as defined in section 1(1) of the EPA, any solid, liquid, gas, odour, heat, sound, vibration, radiation, or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.

"Daimler" means Freightliner Properties Ltd., which amalgamated in 2011 to become Daimler Trucks Canada Ltd.

"Daimler Contractors" means the consultants, contractors, representatives and agents of Daimler engaged in respect of the Daimler Site and the Retained Lands.

"Daimler Order" means a Provincial Officer's Order which will be issued to Daimler Trucks Canada Ltd., as may be amended.

“Daimler Site” means the real property owned by Daimler Trucks Canada Ltd. as of the date of this Approval, and legally described as Concession 3, PT Lot 15 RP 33R-13850 Parts 6 to 8, County of Middlesex, Ontario.

“Director’s Order” means Director’s Order No. 3250-8J4J3G, issued July 20, 2011 issued to NNL, Nagata, Freightliner Properties Ltd., and the City.

“Environmental Laws” means applicable environmental legislation and related instruments, including orders and environmental compliance approvals, issued under said legislation, within the jurisdiction of the Ministry.

“EPA” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended.

“ERA” means the Environmental Risk Assessment report dated February 2017 for the Swale Area or the Environmental Risk Assessment report dated August 2017 with respect to Historical Contamination on the Nagata Site, both prepared by Golder Associates Ltd. for NNL and submitted to the Ministry and, when plural (ERAs), means both.

“Former Nortel Lands” means all of the real properties formerly owned and occupied by NNL for the operation of its London manufacturing facility consisting of the Daimler Site, the Nagata Site, the London Site, and the Retained Lands.

“Historical Contamination” means the contamination of the Former Nortel Lands, including the presence of elevated levels of volatile organic compounds in the soil and groundwater, which resulted from the operation of NNL’s manufacturing facility previously located on the Former Nortel Lands.

“London Site” means the real property owned by the Corporation of the City of London as of the date of this Approval, and legally described as Concession 3, PT Lots 14 & 15 RP 33R-12879 Parts 3 to 9, County of Middlesex, Ontario.

“Ministry” means the Ontario Ministry of the Environment, Conservation and Parks, including any employee in or agent of the Ministry, or any person involved in carrying out a program of the Ministry.

“Nagata” means Nagata Auto Parts Canada Co., Ltd.

“Nagata Order” means the Provincial Officer’s Order No. 6277-AWLJL6, issued to Nagata, dated March 8, 2018, as may be amended

“Nagata Site” means the real property owned by Nagata Auto Parts Canada Co., Ltd. as of the date of this Approval, legally described as Concession 3, PT Lots 14 & 15 RP 33R-12879 Parts 1 & 2, County of Middlesex, Ontario.

“NNL” means Nortel Networks Limited, prior owner of the Retained Lands who transferred ownership of the Retained Lands to NNIC.

“Retained Lands” means the real property owned by NNIC as of the date of this Approval, legally described as Concession 3, PT Lot 15 RP 33R-13850 Parts 3 to 5, County of Middlesex, Ontario.

“Settlement Agreement” means the London Properties Settlement Agreement dated November 6, 2017 and approved by order of the Ontario Superior Court of Justice on November 28, 2017 between NNL, Ernst & Young Inc. in its capacity as Monitor of Nortel Networks Corporation et al. (the “Monitor”), and Her Majesty the Queen in Right of the Province of Ontario as represented by the Minister of the Environment and Climate Change (now the Minister of the Environment, Conservation and Parks).

“Swale Area” means the area of Historical Contamination extending over both the Retained Lands and the Daimler Site, as shown in Figure 1, attached as Schedule “A” to this Approval.

Part 2: Background and Approval

- 2.1 Between 1959 and 1994, NNL operated a 22.3 hectare manufacturing facility located at the Former Nortel Lands. The company carried out plastic moulding, electronics assembly, metal degreasing and painting.
- 2.2 NNL’s historical site activities were the source of contamination at the Former Nortel Lands. Numerous environmental site assessments carried out between 1993 and 1995 confirmed the presence of elevated levels of volatile organic compounds (“VOCs”) in the soil and groundwater.
- 2.3 In 1997, NNL demolished its building on the Former Nortel Lands. The Former Nortel Lands were subsequently subdivided into seven parcels, with NNL retaining ownership of one of those parcels: the Retained Lands.
- 2.4 On January 14, 2009, NNL and certain of its Canadian affiliates initiated insolvency protection proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended to such date (the “CCAA”) and a stay of proceedings was granted by the Ontario Superior Court of Justice (the “CCAA Court”) and Ernst & Young Inc. was appointed as Monitor.
- 2.5 In 2011, the Ministry issued the Director’s Order to NNL, Nagata, Freightliner Properties Ltd. and City in relation to the Historical Contamination at the Former Nortel Lands. The Director’s Order required NNL to, amongst other things, perform further assessment and remediation work in respect of the Historical Contamination.

- 2.6 On August 30, 2012, the Ministry filed a proof of claim (the “Ministry Claim”) in the CCAA proceedings against NNL relating to the remediation of various properties in Ontario, including the amounts alleged owing in connection with the remediation of the Former Nortel Lands.
- 2.7 Over the course of 2012 to 2018, NNL, the Monitor and the Ministry engaged in good faith discussions and negotiations regarding a final settlement of any and all liabilities of NNL in relation to the Former Nortel Lands, including, without limitation, the Director’s Order and the Ministry Claim. These negotiations ultimately led to the development of the Settlement Agreement.
- 2.8 In 2016 and 2017, NNL’s consultant completed the ERAs in respect of the Swale Area and the Nagata Site and submitted them to the Ministry. These ERAs were peer reviewed by a qualified third party and the final versions were updated to incorporate recommendations from the peer reviews.
- 2.9 A Plan of Compromise and Arrangement pertaining to NNL and its Canadian affiliates received Court approval on January 24, 2017, became effective on May 8, 2017 and was implemented on May 25, 2017 (“CCAA Plan”).
- 2.10 On November 6, 2017 the Ministry, NNL and the Monitor executed the Settlement Agreement which was approved by order of the CCAA Court on November 28, 2017. The Settlement Agreement provides for the full and final settlement of all matters that are or could be at issue between or amongst NNL, the Monitor and the Ministry with respect to the Former Nortel Lands.
- 2.11 Under the Settlement Agreement, NNL agreed to grant the Ministry an unsecured claim in settlement of all matters pertaining to the Former Nortel Lands. The Ministry agreed to release NNL and its affiliates from any and all claims with respect to the Former Nortel Lands, including obligations under the Director’s Order and any future environmental obligations in respect of the Former Nortel Lands.
- 2.12 At the request of the Ministry and NNL, the Environmental Review Tribunal revoked the Director’s Order against NNL on February 15, 2018 on the basis that the funds to be paid to the Ministry under the Settlement Agreement will be used to address any outstanding environmental work under the Director’s Order.
- 2.13 The Settlement Agreement establishes that the Ministry shall have a Proven Affected Unsecured Claim (as such term is defined in the Settlement Agreement) against NNL in the amount of \$6,500,000 (six million, five hundred thousand) Canadian dollars, which is referred to as the London Properties Proven Claim. In accordance with the terms of the Settlement Agreement and the CCAA Plan, NNL made an initial distribution to the Ministry of \$2,957,025.92 on March 1, 2018. A second distribution of \$306,390.64 was received by the Ministry on December 12, 2018. The total payout received by the Ministry to date is \$3,263,416.56 (together

with any future distributions on account of the London Properties Proven Claim pursuant to the CCAA Plan, the “Settlement Payment”).

- 2.14 Subsequent to entering into the Settlement Agreement, the Ministry requested that NNL assist in arranging a mechanism by which the Settlement Payment could serve as financial assurance in accordance with the EPA. In particular, the Ministry sought to hold and use the Settlement Payment for the environmental measures required to address the remaining Historical Contamination at the Former Nortel Lands.
- 2.15 NNL has obtained approval of the CCAA Court to transfer the Retained Lands to NNIC, which is the entity that will submit and be subject to this Approval. NNIC is an affiliate of NNL and also subject to the CCAA proceedings. NNIC does not hold any other assets except for certain immaterial equity interests.
- 2.16 On [INSERT DATE] NNL transferred the Retained Lands to NNIC.
- 2.17 The environmental measures required to address the remaining Historical Contamination at the Former Nortel Lands include, without limitation, the following:
 1. the development and implementation of a work plan for the monitoring, maintenance and environmental management of the Historical Contamination at the Retained Lands (“Work Plan”);
 2. the implementation of risk management measures and long-term monitoring to be conducted at the Nagata Site, as are required by the Nagata Order; and
 3. the implementation of the risk management measures, remedial work and long-term monitoring in respect of the Swale Area on the Daimler Site and Retained Lands as described in the ERAs and the Daimler Order.
- 2.18 Solely for the purpose of enabling the Settlement Payment to be held as financial assurance under section 132 of the EPA to address the Historical Contamination (the “Financial Assurance”), and without waiver of any right or protection under the Settlement Agreement or any related order of the CCAA Court, NNIC submits to the obligations and terms under section 2.20 and 4.4 of this Approval and consents to the issuance of this Approval and the use of the Settlement Payment as the Financial Assurance.
- 2.19 Further to the Director’s authority under s. 136 of the EPA, the Crown will use the Financial Assurance for the performance of the environmental measures under section 2.17 hereof and will carry out the Work Plan described in this Approval. Additional work under this Approval will be carried out by Daimler and Nagata further to orders issued to those persons.
- 2.20 As a part of this Approval, NNIC agrees to give permission to the Ministry and/or Daimler and Daimler Contractors to access the Retained Lands on reasonable

prior notice to NNIC as may be necessary for the Ministry and/or Daimler and the Daimler Contractors to carry out work under this Approval. In particular, the Ministry and/or Daimler or a Daimler Contractor will provide a minimum of 48 hours written notice to NNIC before any intrusive testing, remedial work or use of heavy equipment on the Retained Lands and will advise of completion at the end of such work. Provided access to the Retained Lands is provided and not impeded by NNIC or the Monitor, Daimler has agreed to release NNIC and the Monitor from any and all claims related to its access to and environmental work on or in connection with the Retained Lands. Further, in the event that NNIC sells or leases the Retained Lands, NNIC also agrees to require any lessee or subsequent purchaser of the Retained Lands to grant the Ministry and/or Daimler and the Daimler Contractors the same access to the Retained Lands as may be necessary for the Ministry and/or Daimler and the Daimler Contractors to carry out work under this Approval. For greater clarity, nothing in this Approval affects the Ministry's power to access the Retained Lands pursuant to applicable environmental legislation.

Part 3: Voluntary Agreement

- 3.1 Subsection 11(1) of the EPA provides that the Director shall, in a program approval,
- (a) set out the name of the person to whom the approval is directed;
 - (b) set out the location and nature of the source of contaminant;
 - (c) set out the details of the program; and
 - (d) approve the program.
- 3.2 For the reasons described in this Approval, NNIC has consented to the issuance of this Approval as if it were a "person responsible" subject to subsection 10(1) of the EPA.
- 3.3 Subsection 10(1) of the EPA provides that a person responsible for a source of contaminant may submit to the Director a program to prevent or to reduce and control the discharge into the natural environment of any contaminant from the source of the contaminant. The ERAs propose mitigation measures to address the Historical Contamination in the Swale Area and on the Nagata Site. For the purposes of this Approval, the ERAs are considered to be programs under subsection 10(1) of the EPA.
- 3.4 Subsection 10(3) of the EPA provides that the Director may issue a program approval, directed to the person who submitted the program. NNIC has consented to the issuance of such a program approval, subject to the Settlement Agreement and on the basis of the terms set forth herein. Daimler and Nagata will carry out

work on their respective sites in accordance with this Approval.

- 3.5 Section 132 of the EPA provides that the Director may include in a program approval in respect of a works a requirement that the person to whom the program approval is issued provide financial assurance to the Crown in right of Ontario for any one or more of the following environmental measures:
- (a) the performance of any action specified in the program approval;
 - (b) the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by the works to which the program approval is related; and
 - (c) measures appropriate to prevent adverse effects upon and following the cessation or closing of the works.
- 3.6 Subject to the Settlement Agreement and the terms of this Approval, NNIC has voluntarily consented to have the Settlement Payment be held by the Crown as financial assurance pursuant to Section 132 of the EPA, with respect to environmental measures on the Former Nortel Lands.
- 3.7 Section 134 provides that upon request, part or all of the financial assurance given in respect of a works may be returned or released pursuant to an order in writing by the Director.
- 3.8 Section 136 of the EPA states that the Director may require the performance of environmental measures and the use of the financial assurance for the performance of environmental measures.

Part 4: Approval and Order

- 4.1 I am satisfied that implementation of the program will prevent or reduce and control contaminants on or from the Former Nortel Lands.
- 4.2 For the above reasons, I hereby approve the program. The details of the program are as follows:
- 1. develop a Work Plan for the monitoring, maintenance and environmental management of Historical Contamination at the Retained Lands;
 - 2. implement the Work Plan and environmental management measures at the Retained Lands;
 - 3. implement the work required by the Nagata Order;
 - 4. implement the work required by the Daimler Order; and
 - 5. implement risk management measures as described in the ERAs, if necessary.

- 4.3 For the purpose of s. 132 of the EPA, the Settlement Payment shall be held as financial assurance for the purposes of carrying out some or all of the work described in this Approval.
- 4.4 For the purpose of s. 134 of the EPA, NNIC waives its right to request a return or release of the Financial Assurance under this Approval.
- 4.5 For the purpose of s. 136 of the EPA, the Director requires the performance of the environmental measures described in this Approval for which the Financial Assurance is held. Further to the Settlement Agreement, I have reasonable and probable grounds to believe that any environmental measure required by this Approval has not been and will not be carried out by NNL or NNIC.
- 4.6 For the avoidance of doubt, nothing in this Approval shall derogate from any right or protection of NNL or NNIC under the Settlement Agreement or any related order of the CCAA Court, and in particular, nothing in this Approval requires NNL or NNIC to carry out any environmental work described herein or to provide additional financial assurance, except for the Settlement Payment.

Issued at London, Ontario, Canada this _____ day of _____, 2020.

Lee Orphan
Director, EPA sections 10, 132 & 136
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Schedule "A"

Figure 1

