



Ministry of the Environment Conservation
and Parks

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

Program Approval (Amended)

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

This Program Approval is directed to:

Nagata Auto Parts Canada Co., Ltd.

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.

“Director’s Order” means Director’s Order No. 3250-8J4J3G, issued July 20, 2011 issued to NNL, Nagata, and other parties.

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

“Former Nortel Lands” means all of the real properties formerly owned and occupied by NNL for the operation of its London manufacturing facility that included the Nagata Site and certain adjacent properties.

“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.

“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, a prior owner of the Former Nortel Lands.

“NNIC” means Nortel Networks International Corporation.

“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).

Part 2: Background and Approval

- 2.0 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.
- 2.1 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.
- 2.2 In 1997, NNL demolished its building on the Former Nortel Lands. The Former Nortel Lands were subsequently subdivided into seven parcels, which included the Nagata Site. On April 22, 1997 Nagata purchased the Nagata Site.
- 2.3 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,(the “**CCAA**”) and a stay of proceedings was granted by the Ontario Superior Court of Justice and Ernst & Young Inc. was appointed as Monitor.

- 2.4 In 2011, the Ministry issued a Director's Order ("**2011 Order**") to NNL as owner of the Former Nortel Lands, and to Nagata and others, who were owners or subsequent owners of a part of the Former Nortel Lands, in relation to the Historical Contamination. The 2011 Order required Nagata to, amongst other things, perform further assessment and remediation work in respect of the Historical Contamination as it related to the Nagata Site.
- 2.5 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.
- 2.6 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.
- 2.7 At the request of the Ministry and NNL, the Environmental Review Tribunal revoked the 2011 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.
- 2.8 In accordance with the terms of the Settlement Agreement and the CCAA Plan, the Ministry has received a distribution in the amount of \$3,598,308.65 as of the date of this amended Approval, not including any interest accrued. There may be future distributions pursuant to the CCAA Plan (the total payout received by the Ministry to date plus any future distributions are hereinafter referred to as the "**Settlement Payment**").
- 2.9 On March 8, 2018, the Nagata Order was issued to Nagata on consent, which required Nagata to carry out certain necessary assessment and remediation work in respect of the Nagata Site. In addition, the Ministry and Nagata entered into a settlement agreement which provided that Nagata may request the release of financial assurance held by MECP to reimburse costs incurred in carrying out the work in the Nagata Order up to a maximum amount of \$245,000 ("**Nagata Site FA**").
- 2.10 On March 5, 2020, the Approval was originally issued to NNIC. As issued, the Approval required, amongst other things, the development and implementation of a work plan for the monitoring, maintenance and environmental management of Historical Contamination of the Former Nortel Lands. This work included the implementation of risk management measures set out in the Nagata Order to be conducted at the Nagata Site. The purpose of the Approval was to provide an instrument for the Settlement Payment to be held as financial assurance in respect of the Former Nortel Lands, including the Nagata Site FA.

- 2.11 Subject to the Settlement Agreement, NNIC consented to have the Settlement Payment be held by the Crown as financial assurance for the Approval, pursuant to Section 132 of the EPA, with respect to environmental measures on the Former Nortel Lands and to not seek return of the financial assurance pursuant to Section 134 of the EPA.
- 2.12 On DATE, a new purchaser (“**Purchaser**”) acquired a portion of the Former Nortel Lands (“**Purchased Lands**”) and requested that the Approval be amended into two separate program approvals: one directed at the Nagata Site; the second directed at the Purchased Lands. This Approval is the program approval directed at the Nagata Site and the Nagata Site FA will now relate only to this Approval.

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 Subsection 11(3) of the EPA provides that the Director may, by order, amend a program approval with the consent of the person to whom the program approval is directed. NNIC has consented to the amendment and transfer of this Approval to Nagata as set forth herein.
- 3.3 As the owner of the Nagata Site, Nagata is a person responsible for a source of contaminant, namely the Historical Contamination, as it relates to the Nagata Site only, for the purposes of subsection 10(1) of the EPA.
- 3.4 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. For the purposes of this Approval, the work required by the Nagata Order is a program under subsection 10(1) of the EPA.
- 3.5 Nagata consents to this amendment of the Approval to provide that Nagata is the person to whom this Approval is directed and to incorporate the requirements of the Nagata Order as a program. Nagata will carry out work on the Nagata Site in accordance with this Approval.

3.6 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.

3.7 Section 134 of the EPA provides that upon request, part or all of the financial assurance given in respect of a works, which for purposes of this Approval is the Nagata FA, may be returned or released pursuant to an order in writing by the Director. The MECP confirms that Nagata is the only party permitted to request a return of the Nagata Site FA.

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 Nagata Site.

4.2 For the above reasons, I hereby approve the program. The details of the program are as follows:

- (a) implement the work required by the Nagata Order.

4.3 For the purpose of s. 132 of the EPA, the Nagata Site FA 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, Nagata agrees to submit paid invoices in respect of work completed under the Nagata Order as requests for the release of financial assurance up to a maximum of the amount of the Nagata Site FA and the MECP agrees to consider such requests in a timely manner.

Issued at London, Ontario, Canada this _____ day of _____, 2024.

XXXXXXX

Director, EPA sections 10 & 132
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