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Environment versus bankruptcy

NORTEL: Cleanup fight likely to decide which arm of law is stronger

By CHIP MARTIN, THE LONDON FREE PRESS

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The Nortel site in south London.

Nortel Networks faces a new demand from Ontario's Environment Ministry that it curb contaminants suspected of seeping from the site of its former telephone plant in South London.

The bankrupt former telecommunications giant already is challenging an earlier, narrower order, arguing Nortel is shielded from such orders by federal bankruptcy law.

Nortel, formerly Northern Telecom, is seeking a stay of the earlier order in Ontario's Superior Court of Justice in a three-day motion set to begin Sept. 19 in Toronto.

The company argues bankruptcy law trumps environmental law and it shouldn't be forced to spend the \$10 million it estimates it would cost to clean up its old site.

Next month, Nortel is expected to receive about \$900 million from the auction of roughly 6,000 patents it owns.

The new order, signed last week by Kanina Blanchard, London district manager for the Environment Ministry, adds Nagata Auto Parts as a respondent. Nagata purchased part of the original Nortel site in 1997.

"We have told Nortel what work we want to be done to further study and assess the site and we expect this work to be done in a timely manner," Blanchard told The Free Press.

Nortel and Nagata must outline the extent of pollution and develop a plan to prevent the spread of volatile organic compounds and trichloroethylene found on their properties. Both compounds are linked to cancer.

Blanchard insisted earlier the Environment Ministry has a responsibility to protect the environment, bankruptcy or not.

"Our job is to make sure the site does not pose a risk to the community or the environment," she said Tuesday. "Additional assessment work needs to be completed and issuing an order is the best way to make sure the site is cleaned up and the environment is protected."

The order requires Nortel and Nagata to find a qualified consultant to do the work, but not Golder Associates, the London firm Nortel has retained.

The Nortel plant, which manufactured telephones from 1959 until 1994, was demolished in 1997. Portions of its property south of Hwy. 401 and east of Wellington Rd. were sold to Nagata and to Freightliner Canada. Nortel kept the central portion.

At one time, the telephone plant was one of the largest in the London region, with 2,200 workers. Insolvent at the outset of 2009, Nortel was granted bankruptcy protection by the courts.

The ministry order is considered a "draft" until public comment ends June 20 and Ontario's environmental review tribunal agrees to replace the old order, issued October 2009, with a more comprehensive one.

The latest order complains the information Nortel provided in response to earlier requests to outline the extent of contamination, its migration and remedy is "incomplete."

The 16-page document noted a collection system intended to prevent off-site spreading of contaminants is not effective and "inappropriate."

"The patchwork approach that has been utilized thus far cannot hope to address all of the potential environmental issues posed to off-site areas," it said.

It took aim at Golder Associates, the environmental firm used by Nortel since 1993 to deal with the contamination.

"Golder . . . has had consistent difficulty responding to the ministry's information requests on this file in a manner and on a schedule deemed necessary by the ministry," the order said.

The fight between the ministry and Nortel is being watched widely because the courts are to determine the relative strengths of legislation protecting the environment against those protecting the bankrupt.

With a large number of "brownfield" sites left by industry in Ontario, the case is expected to have wide implications.

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