

ENVIRONMENTAL STANDARDS AND REQUIREMENTS RELATING TO THIRD-PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

The purpose of this document is to provide a general overview of the typical environmental due diligence, permitting, development, and operations and maintenance requirements that the [insert definition of Requesting Party] (“Requesting Party”) will be required to fulfill for any project that results in the acquisition of Property by the Requesting Party and subsequent transfer to Niagara Mohawk Power Corporation (“NMPC”) in connection with the construction (whether by the Requesting Party or NMPC) of any asset or real property improvement (“Proposed Project”). The term “Property,” as used herein, refers solely to the real property or real property interest to be transferred to NMPC. The Requesting Party will be required to obtain all permits, and prepare all plans or other documents, as required under all applicable environmental federal, state, and local laws, regardless of whether such permit, plan, or document is discussed herein. NMPC expressly reserves the right to impose additional, supplemental, or modified site-specific environmental requirements on the Requesting Party beyond what is set forth in this document, if warranted and in NMPC’s sole discretion.

ENVIRONMENTAL DUE DILIGENCE

1. Environmental Due Diligence Requirements Generally

- a. Prior to the transfer of any Property to NMPC, the Requesting Party will be required to conduct environmental due diligence consistent with the standards set forth below, as well as the federal All Appropriate Inquiry Standard¹ and any state equivalents.
- b. The Requesting Party will be solely responsible for all costs and expenses associated with environmental due diligence including, without limitation, all costs of sampling, soil testing, and any other methods of investigation which would disclose the presence of any hazardous substance on, at, under, or migrating to or from the Property, or which is present upon the Property by migration from an external source, and which existed on the Property prior to, or at the time of, the transfer/acceptance.
- c. All environmental due diligence activities must be performed by a qualified environmental professional.
- d. The Requesting Party will be required to notify NMPC in writing as soon as reasonably practicable after learning of the presence of any hazardous substance on, at, under, or migrating to or from the Property.

¹ See 40 CFR Part 312.

- e. The Requesting Party will not be permitted to deviate from these guidelines unless expressly authorized in writing by NMPC.

2. Phase I Environmental Site Assessment

- a. The Requesting Party will be required to conduct a Phase I Environmental Site Assessment (“Phase I ESA”) of the Property. The Phase I ESA report must be reviewed and approved by NMPC prior to, and as a condition of, transfer.
- b. Unless otherwise approved by NMPC in writing, the subject parcel for which the Phase I ESA is performed must be limited to the Property. In other words, the Requesting Party’s environmental consultant may not prepare a Phase I ESA report that includes other parcels (to which NMPC is not acquiring a real property interest) as the “subject parcel.”
- c. If requested by NMPC, the Phase I ESA must include the following “non-scope” items:
 - i. An emerging contaminant review, including an evaluation of the potential presence of per- and polyfluoroalkyl substances (“PFAS”) and 1,4-dioxane on, at, or under the Property.
 - ii. A limited evaluation for the presence of wetlands based on the site reconnaissance, records reviews, and database searches. A full wetlands delineation survey will generally not be required at the time the Phase I ESA is conducted but may be required at a later time.
 - iii. To the extent any structures are present, a cursory visual inspection for:
 - 1. Asbestos Containing Material (“ACM”) or Presumed ACM;
 - 2. Mold; and/or
 - 3. Lead-based paint.
- d. The Requesting Party will be required to immediately notify NMPC of any Recognized Environmental Conditions (“RECs”) identified by the Phase I ESA, regardless of whether the Phase I ESA report has been prepared yet.
- e. The Phase I ESA must be performed, and the Phase I ESA report prepared, in compliance with the applicable ASTM Phase I ESA standard.
- f. The Phase I ESA must be viable at the time NMPC acquires the Property. If the report is no longer viable at that time, the Requesting Party will be required to update the Phase I ESA in accordance with ASTM standards.

3. Phase II Environmental Site Assessment

- a. NMPC reserves the right, in its sole discretion, to require that the Requesting Party conduct a Phase II Environmental Site Assessment, regardless of whether RECs are identified in the Phase I ESA or whether the Phase I ESA recommends a Phase II ESA. The Phase II ESA report must be reviewed and approved by NMPC prior to, and as a condition of, transfer.
- b. The Requesting Party will be required to provide NMPC with all data generated in connection with the Phase II ESA as soon as such data is available, regardless of whether the Phase II ESA report has been prepared yet.
- c. The Phase II ESA must be performed, and the Phase II ESA report prepared, in compliance with the applicable ASTM Phase II ESA standard.

4. Asbestos, Mold, and Lead-Based Paint Surveys

If warranted by the findings of the cursory visual inspection conducted as part of a Phase I ESA or otherwise requested by NMPC, and to the extent applicable, the Requesting Party will be required to conduct an asbestos, mold, and/or lead-based paint survey.

5. Wetland, Wildlife, and Cultural Resource Studies

For all Property, the Requesting Party will be required to conduct all surveys, studies, or other assessments required for the Proposed Project under any federal, state, or local law, to the extent applicable, or as otherwise requested by NMPC, including but not limited to:

- a. Wetlands delineation surveys;
- b. Environmental Impact Statements/Assessments;
- c. Wildlife studies (e.g., rare, threatened, and endangered species surveys, avian/bird and bat studies, eagle nest surveys, etc.);
- d. Invasive species studies;
- e. Noise impact assessments;
- f. Shadow flicker studies; and
- g. Cultural, historical, and archaeological impact studies.

6. Environmental Due Diligence Request List

In addition to the requirements set forth above, the Requesting Party will be required to obtain and provide to NMPC copies of all documents (including all exhibits, attachments, appendices, figures, tables, design drawings, and other supporting documentation) set forth in Exhibit A hereto, to the extent such documents are available or become available. This requirement will continue through the transfer of the Property to NMPC, and the Requesting Party will be

required to supplement any prior responses if new documents are generated or identified prior to the transfer of the Property to NMPC.

7. Due Diligence Deliverables and Reliance Letters

The Requesting Party will be required to promptly, and prior of the transfer of the Property to NMPC, provide to NMPC the following deliverables and reliance letters, to the extent applicable:

- a. A complete copy of any deliverable prepared by any environmental consultant in connection with the Requesting Party's due diligence, including but not limited to the following (to the extent applicable):
 - i. Phase I ESA reports (including any appendices) and any updated reports or addenda;
 - ii. Phase II ESA reports (including any appendices) and any updated reports or addenda;
 - iii. Asbestos, mold, and lead-based paint surveys; and
 - iv. Wetlands delineation surveys, Environmental Impact Statements/Assessments, wildlife studies, noise impact assessments, shadow flicker studies, and any cultural, historical, and archaeological impact studies.
- b. For each written deliverable, the Requesting Party will be required to provide to NMPC a reliance letter signed and dated by the consultant who prepared such deliverable. The reliance letter must state that NMPC is entitled to rely on, and is an authorized user, of such deliverable. If the deliverable is updated or any addendum is issued after the reliance letter is provided, the Requesting Party will be required to provide an updated reliance letter.

8. Other Due Diligence Standards and Requirements

The due diligence standards and requirements set forth herein are intended to supplement and will not relieve the Requesting Party of complying with, any other due diligence standards and requirements set forth in the project documents for the Proposed Project.

Properties subject to a Site Management Plan ("SMP") and/or deed restriction (e.g., Environmental Easement) will be reviewed by NMPC on a case-by-case basis to determine suitability for the Proposed Project and future operations. NMPC will not assume any liability or responsibility subject to the SMP or deed restriction, and NMPC reserves the right, in its sole discretion, to reject any Property subject to an SMP or deed restriction.

PERMITTING AND DEVELOPMENT DOCUMENTS

The Requesting Party will be required, as applicable, to prepare or obtain, and provide to NMPC for review, comment, and approval, all environmental permit and development documents required under any applicable federal, state, and local law including, without limitation, the following permits and documents listed below. For all permits, licenses, or other submissions required to be approved by or submitted to a governmental entity (regardless of whether such document is discussed herein), NMPC will have the right, but not obligation, to review and comment on the application or draft document prior to submission, to the extent applicable to the Property.

1. Stormwater

- a. Stormwater permits for construction; and
- b. Stormwater Pollution Prevention Plan (SWPPP), including all supporting design drawings.

2. Wetlands

- a. Wetlands permits; and
- b. Wetlands mitigation planning and restoration documents, to the extent required.

3. Wildlife

- a. Wildlife permits (e.g., incidental take permit, migratory bird permit, eagle nest take permit).

4. Spill Prevention, Control, and Countermeasure (SPCC) Plan

- a. SPCC plan which, at a minimum, clearly indicates the location and volume/capacity of all petroleum storage and generators (including emergency).

5. Access Roads

- a. Access road design documents; and
- b. Map clearly depicting all access roads.

6. Other Permitting and Development Document Requirements

The permitting and development document requirements set forth herein are intended to supplement and will not relieve the Requesting Party of complying with,

any other permitting and development document requirements set forth in the project documents for the Proposed Project.

NMPC reserves the right to delay the transfer of any real property should permit conditions not be adequately complied with at the time of the request to schedule transfer.

POST-TRANSFER PERMITTING, OPERATIONS AND MAINTENANCE (O&M), AND DOCUMENTATION

Following the transfer of the Property to NMPC, the Requesting Party will be responsible for the following environmental permits and O&M, to the extent applicable, for the Property. For all permits, permit renewals, permit modifications, environmental studies, or other documents required to be approved by or submitted to a governmental entity (regardless of whether such document is discussed herein), NMPC will have the right, but not obligation, to review and comment on the application or draft document prior to submission, to the extent applicable to the Property.

1. Stormwater

- a. Terminating all construction-related stormwater permits in accordance with all laws and regulations; and
- b. Inspecting, managing, repairing/replacing, and otherwise maintaining all stormwater controls and implementing best management practices (BMPs), subject to consultation with and approval from NMPC.

2. Wetlands

- a. Complying with, renewing, and otherwise maintaining all required wetlands permits;
- b. Complying with all wetland mitigation requirements, including any monitoring requirements;² and
- c. Preparing and submitting any required wetlands reports or other documentation.

3. Wildlife and Invasive Species

- a. Complying with, renewing, and otherwise maintaining all required wildlife permits;

² NMPC will not assume or otherwise be responsible for any wetland monitoring duties for either the Property or the Proposed Project.

- b. Conducting all required wildlife and/or invasive species studies and monitoring;³ and
- c. Preparing and submitting any required wildlife and/or invasive species reports or other documentation.

4. Documentation

The Requesting Party will be required to provide to NMPC, on a prompt basis, copies of all environmental permits (including any renewals and related submissions), reports, studies, data, governmental correspondence, and all other environmental documentation pertaining to the Property.

5. Other Post-Transfer Permitting, O&M, and Documentation Requirements

The post-transfer permitting, O&M, and documentation requirements set forth herein are intended to supplement and will not relieve the Requesting Party of complying with, any other post-transfer permitting, O&M, and documentation requirements set forth in the project documents for the Proposed Project.

OTHER REQUIREMENTS

In addition to the requirements discussed herein, additional legal terms will be required in connection with the transfer of the Property to NMPC. The Requesting Party will be required, in part, to indemnify, defend, and hold NMPC and NMPC's agents, employees, officers, directors, parents, subsidiaries, and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge, fees (including attorney and consulting fees), expense, or cause of action arising from, or related to, any hazardous substance on, at, under, or migrating to or from the Property including, but not limited to, any claims related to environmental investigation, removal, remediation, management, or monitoring of any hazardous substance; damages to any person or property resulting from the presence of, or exposure to, any hazardous substance; and/or toxic tort, medical monitoring, property diminution, nuisance, or trespass claims. The Requesting Party may also be required to provide a post-closing escrow, and/or enter into a post-closing access agreement, to address ongoing environmental issues at the Property.

³ NMPC will not assume or otherwise be responsible for any species monitoring, or be held liable for any species fatalities, on or near the Property or Proposed Project.

EXHIBIT A
ENVIRONMENTAL DUE DILIGENCE REQUEST LIST

1. Historical Records

- a. Aerial photographs
- b. Topographic maps
- c. Local street directories
- d. Fire insurance/Sanborn maps
- e. Building department records
- f. All other documents pertaining to historical facility operations and use of the subject property
- g. Records pertaining to any fire-related incidents, including the method of extinguishment

2. Property Records

- a. Title searches
- b. Documents pertaining to environmental easements, deed restrictions, Activity Use Limitations (AULs), and other environmental institutional controls
- c. Documents pertaining to engineering controls
- d. Assessor's records and property tax records
- e. Zoning and land use records
- f. Brownfields applications and related documentation (including any tax incentive documentation)

3. Environmental Assessments and Data

- a. Phase I and Phase II Environmental Site Assessments
- b. Environmental investigative, remedial, and monitoring reports and data
- c. Asbestos, lead (paint, piping, etc.), and mold surveys and related documentation (including asbestos O&M plans and abatement records)
- d. All other environmental assessments, audits, and reports

4. Hazardous Materials and Waste

- a. Documentation pertaining to current and historical hazardous materials and waste including:
 - i. Types
 - ii. Quantities
 - iii. Locations
 - iv. Storage, management, and disposal

- v. Hazardous materials or wastes used, generated, transported, disposed of, or otherwise handled during construction/development
- b. Spill/release documentation, including any historical spill/release documentation and any spill/release documentation generated during, or in connection with, construction/development
- c. Documentation pertaining to the use or presence of per- and polyfluoroalkyl substances (PFAS) and other emerging contaminants
- d. EPCRA submissions (e.g., Tier II, TRI)

5. Physical Setting Documentation

- a. Topographic maps
- b. Geologic surveys
- c. Light Detection and Ranging (LiDAR) surveys
- d. Hydrogeologic and hydrologic studies
- e. Ground Penetrating Radar (GPR) surveys
- f. Geotechnical data or reports
- g. Historic fill and soil deposition documentation, including whether any natural resources have been altered or impacted (e.g., filling in wetlands, altering the course of streams, creeks, or waterways)
- h. Wetlands surveys

6. Operational Documentation

- a. Site plans or surveys, including any “as built” surveys
- b. Facility drawings
- c. Environmental permits, licenses, authorizations, notices, exemptions, and waivers
- d. Spill Prevention, Control, and Countermeasure (SPCC) plans (both current and former)
- e. Stormwater Pollution Prevention Plans (SWPPPs) (current and former), including all supporting design drawings
- f. Operations and maintenance (O&M) plans
- g. Site Management Plans (SMPs)

7. Site Equipment and Structures

- a. A list of all current and former aboveground and underground storage tanks, including:
 - i. Location
 - ii. Size
 - iii. Contents
 - iv. Age of tank/date installed
 - v. Tightness testing/leak detection documentation
 - vi. Documentation pertaining to any leaks or releases

- vii. Removal and abandonment records, including any soil sampling data
 - b. Documentation pertaining to dry wells, septic systems, leach fields, sumps, catchment areas and drainage basins, and underground injection structures
 - c. Documentation pertaining to wells on or near the subject property, including potable, groundwater monitoring, and production wells
 - d. Documentation pertaining to transformers
 - e. Documentation pertaining to any oil-filled equipment
 - f. Documentation pertaining to any equipment or structural changes discovered or occurring during construction/development
- 8. Government and Third-Party Correspondence and Proceedings
 - a. Governmental correspondence related to environmental matters
 - b. Requests for information
 - c. Subpoenas
 - d. General Notice Letters, Special Notice Letters, and other documentation pertaining to Potentially Responsible Party (PRP) liability/status
 - e. No Further Action letters and other regulatory closure documentation
 - f. Notices of violation and citations
 - g. Records pertaining to any actual or potential environmental claim, action, lawsuit, settlement, arbitration, administrative order, consent decree, or any other environmental proceeding