

**April 8, 2019**  
**Town of Tonawanda Town Board**  
**Eminent Domain Procedure Law Public Hearing**  
**“Acquisition of the former Huntley Power Plant located at 3500 River Road,**  
**Tonawanda, New York (tax parcel ID # 64.16 – 1 – 1.2)”**

**Statement of Elizabeth A. Holmes on behalf of**  
**Huntley Power LLC and NRG Energy, Inc.**

My name is Elizabeth Holmes. I am an attorney with the law firm of Barclay Damon LLP. We are counsel to NRG Energy, Inc. (“NRG”) and Huntley Power LLC (“Huntley”), the owner of the former Huntley Generating Station real property and improvements (“Huntley Station”) at issue in this public hearing which the Town of Tonawanda (“Town”) states it is holding pursuant to the Eminent Domain Procedure Law (“EDPL”). It is unclear whether this public hearing is intended as an improper continuation of the eminent domain process the Town began with its December 3, 2018 public hearing regarding its proposed acquisition of the entire Huntley Station (“December 3 Hearing”) or the Town is restarting the process because of its recognition of the deficiencies inherent in its first attempt at eminent domain with respect to the Huntley Station. Supervisor Emminger stated at the Town Board’s March 25, 2019 meeting that the Town is calling for a “new” hearing regarding eminent domain at the Huntley power plant based on comments it has received and its own due diligence. The result, according to the Supervisor, is that the Town has a much more “refined” vision for its acquisition which he promised would be explained at this evening’s hearing. What is meant by “new” and a more “refined vision” remains unclear.

In any event, the Town’s purpose, notice and process behind this April 8, 2019 hearing and its proposed acquisition of “portions” of the Huntley Station as referenced in its published notices of this hearing is as substantively and procedurally flawed as that associated with the December 3 Hearing.

According to the Town of Tonawanda’s notice of the April 8, 2019 public hearing (the “Notice”) which was published in the Ken-Ton Bee on March 27 and April 3, 2019 and in the Buffalo News on March 28- April 1, 2019, the subject of this hearing is the:

acquisition of real property interests and solicit comments regarding the proposed acquisition of portions of the former Huntley Power Plant property located at 3500 River Road, Tonawanda, New York (tax parcel ID # 64.16-1-1.2) pursuant to New York Eminent Domain Procedure Law.

According to the Notice, the purported public purpose for the Town’s proposed acquisition is:

to secure the property to ensure its timely and appropriate redevelopment, provide public access, prevent blight through vacancy and to provide continued access to a critical raw water supply for the Town of Tonawanda.

As we stated at the December 3 Hearing, a municipality's power to seize the private real property owned by a person or entity over the owner's strenuous objection is truly extraordinary. Accordingly, both at the constitutional and statutory levels, the law imposes a variety of very specific limitations and requirements on a town's exercise of this power. Huntley and NRG object to the proposed taking of its property by the Town of Tonawanda (the "Town") as being beyond the Town's lawful powers in violation of (i) the 5<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution, (ii) Article 1, sections 6 and 7 of the New York State Constitution, (iii) Town Law 64 (2), (iv) the EDPL and (v) the State Environmental Quality Review Act ("SEQRA").

At the December 3 Hearing, Huntley emphasized that in addition to being unsupported by law and procedurally defective, the Town's proposed taking is, in fact, contrary to both of its claimed purposes of redevelopment of the Huntley Station and guaranteeing the supply of raw water to certain Town industries.

We explained NRG has been actively engaged in a national marketing and sales effort since early 2018 with the intent to attract a qualified buyer with the financial capacity and experience to redevelop the Huntley Station. Since then, NRG has continued to make progress towards the sale of the Huntley Station. The Town's purported purpose of "timely and appropriate redevelopment" is, and has been, well underway by NRG. Rather than accomplish such redevelopment, the Town's actions in pursuing eminent domain will be a significant obstacle to the process and both jeopardize and delay any purchase and sale contract for the Huntley Station with its accompanying redevelopment. In short, the Town's pursuit of eminent domain results in exactly the opposite of its stated public purpose.

With respect to the raw water issue, we also explained at the December 3 Hearing that there has never been an interruption of the Town industries' access to raw water through Huntley's facilities and that after NRG acquired the Huntley Station it entered into license agreements with the industries. Those license agreements are still in effect. Further, that NRG had been, and was then working with the industries to extend such agreements while balancing the needs and future redevelopment opportunities of the Huntley Station.

Consistent with those representations, NRG has recently executed extensions of such license agreements with PeroxyChem LLC ("PeroxyChem") and Sumitomo Rubber Corporation USA, LCC ("Sumitomo") which provide these industries the continued access over Huntley's property and infrastructure to draw raw water for their operations as these industries work toward establishing independent operations to enable redevelopment of the Huntley Station.

As detailed below, there are multiple reasons why the Town's proposed taking is both unlawful and unnecessary and should be rejected:

- There have been no interruptions to the industrial companies that withdraw raw water using the Huntley Station intake and screening facilities. Huntley entered into agreements with the industrial companies granting them continued access to withdraw water. These agreements remain in effect and have been extended to provide additional time to those parties as they develop a long-term solution.
- The Town's proposed eminent domain acquisition of the Huntley Station for redevelopment purposes is directly at odds with the prior public and private statements by Town representatives and the Town's official actions to date; the Town's proposed acquisition interferes with and will delay the sale of the Huntley Station.
- The Town's Notice of this hearing and stated public purposes are fatally defective under the law.
- The Town's purpose of securing the property for "timely and appropriate redevelopment" and to "avoid blight" is illusory at best as evident by the fact the Town has not adopted, nor even disclosed, a proposed redevelopment project conceptually or otherwise.
- The environmental review, to the degree there has been one, is grossly inadequate and violates both SEQRA and the EDPL.
- The Town's description of the property it is considering taking is both unclear and contradictory in the Notice and the separate March 28, 2019 letter with an aerial map from its counsel to Huntley Power LLC which includes land owned by New York State ("Letter Notice").
- The Town lacks the regulatory authority to undertake the project without the required permits which is a prerequisite to the exercise of its power of eminent domain. The existing water withdrawal permits utilized by PeroxyChem and Sumitomo are not transferable.
- Town Law 64 (2) bars the proposed acquisition and subsequent conveyance of any or all of the Huntley Station to a private party without a permissive referendum as required by the Gift and Loan Clause of Art. 8 sec. 1 of the New York Constitution.
- Town Law 64 (2), the EDPL and the New York State and Federal Constitutions require the Town to pay just compensation for any property interests in acquires with respect to the Huntley Station. The Town has produced no evidence to suggest it has the financial resources to satisfy its obligation to pay just compensation for the Huntley Station.

- As both the public purpose and extent of the real property interests the Town is proposing to acquire are unclear, the Town's proposed acquisition of the Huntley Station is in excess of what is needed for its purported public purpose.

## **I. Background**

### **a. The Property**

The property identified in the Town's public hearing notice is the site of the former Huntley Station which was a 100-year-old coal-fired electric generating facility that ceased operation as of March 1, 2016 and was closed consistent with the requirements of the New York Public Service Commission and the Federal Energy Regulatory Commission. There are 6 coal-fired units on site that have been retired in place. The portion of the Huntley Station identified as 3500 River Road in the Town's notice includes approximately 95 acres, a main building complex which consists of several structures totaling approximately 2,400,000 square feet. Portions of these buildings are over 100 years old and house the 6 coal-fired generating units retired in place as noted earlier. There are also various outbuildings totaling approximately 145,000 square feet and two pump houses owned by third parties. One of the pump houses is owned and maintained by PeroxyChem, and the other by Sumitomo. The utility, Niagara Mohawk Power Corporation (d/b/a National Grid), also has various equipment located within the buildings.

3500 River Road also includes water intake bays, water tunnel, screen houses and related facilities to withdraw water from the Niagara River while protecting the aquatic environment which facilities were originally used to provide cooling water to the generating units. Specifically, Screen House number 2 provided cooling water to units 63 – 66 and Screen House number 1 provided cooling water to units 67 and 68. Both the location and size of these facilities significantly interfere with the redevelopment of the Huntley Station. That is, they are located in the approximate strategic center of the property's waterfront on the Niagara River behind the main building complex. Since the intakes were designed to provide cooling water for a coal-burning electric generation plant, they are grossly oversized for the requirements of PeroxyChem and Sumitomo. The Huntley Station is also encumbered by numerous significant easements held by various third parties, most notably, National Grid. The property also includes a coal yard, south settling pond and equalization basins.

As previously noted, since the Huntley Station closed, NRG has marketed the property on a national basis and worked with NYSDEC on plant retirement/closing environmental issues. NRG has also entered into extension agreements with PeroxyChem and Sumitomo regarding the use of and access to Huntley's infrastructure and lands to draw raw water from the Niagara River.

A portion of the Huntley Station was recently accepted into the New York State Brownfields Cleanup Program ("BCP"). The Town submitted a letter in support of the application. The BCP provides for timely remediation to promote site redevelopment. The Town's planning documentation (e.g., Brownfield Opportunity Area nominating draft) envisions the use of the BCP to promote Huntley site redevelopment. The Letter Notice appears to exclude some, but not all, of this area and includes New York State owned lands.

**b. Third Party Water Withdrawals**

As explained previously at the December 3 Hearing, Huntley and the prior owners of the Huntley Station have, since 1920 through the present, including after the Huntley Station closed, allowed nearby third-party companies access to withdraw water for industrial purposes, principally non-contact cooling water, in connection with their respective operations utilizing the Huntley Station's intake and screening facilities. These third-party industrial facilities are, most notably PeroxyChem, formerly FMC Corporation, at 35 Sawyer Ave. and Sumitomo formally Dunlop, at 10 Sheridan Drive.

Huntley and the prior owners of the Huntley Station granted PeroxyChem and Sumitomo, and their predecessors, a combination of permanent and temporary easements, licenses and leaseholds to locate their pump houses, discharge lines, pumps and waterlines on the 3500 River Road property so they can draw water from the Huntley Station's intake bays relying on its screening facilities. Huntley does not and has not supplied water to PeroxyChem, Sumitomo, other Town industries or any of their respective predecessors.

It should be emphasized that there has been no interruption to the industrial companies withdrawal of water using Huntley's intake and screening facilities, including after Huntley Station closed. At the December 3, 2018 hearing, we explained NRG has worked in good faith with the parties to accommodate their needs and allow time to plan for the future. Indeed, after Huntley retired, license agreements were negotiated between Huntley and PeroxyChem and Sumitomo, which contracts are still in effect.

Consistent with NRG's representations in this regard, NRG, PeroxyChem and Sumitomo have entered into extensions to the already existing agreements to allow them continued use of and access to the Huntley Station property and continued reliance on Huntley's State Pollutant Discharge Elimination System or "SPDES" permit while they work to establish independent operations. In this regard, the Town's proposed acquisition not only contradicts its purported public purpose of providing its industries continued access to raw water, but threatens it as well. While the specifics of these agreements are confidential, they guarantee water access to both PeroxyChem and Sumitomo.

The taking of Huntley's property by the Town would nullify the current regulatory basis upon which the adjacent industrial customers are relying to obtain their cooling water. The SPDES permit includes conditions to protect the aquatic environment from the impact of water withdrawals from the Niagara River that ultimately feed both industrials. In fact, the NYSDEC issued SPDES permit for PeroxyChem specifically provides that once the Huntley Station ceases to operate its intakes, PeroxyChem must demonstrate how it would comply with the applicable laws and regulations to protect the aquatic environment. (See, the SPDES Permit NO. NY 0000337, Special Condition 2).

Since the closing of the Huntley Station, Huntley has worked with PeroxyChem and Sumitomo to establish an arrangement enabling them to continue withdrawing water unabated from the Huntley Station intakes utilizing the protective screening facilities permitted under Huntley's SPDES permit. Those arrangements were made in contemplation of PeroxyChem and Sumitomo establishing independent operations by developing long-term alternatives under their own permits more suited to their needs than facilities intended for a large generating station, which would not interfere with redevelopment of the site. As noted previously, NRG has entered into agreements with the industries. The Town's alleged purpose is both a fiction and unnecessary.

Sometime after the closing of the Huntley Station, the Town announced its interest in upgrading its Water Treatment Plant with a new raw water intake system of its own at a cost of approximately \$27.2 million to provide raw water to industries in the Town. (See, Buffalo News Articles dated August 21, 2018 and September 20, 2018). The Town's plan, according to its Director of Water Resources, Michael Kessler, as reported in the Buffalo News, is to obtain \$16 million in State grants and borrow the remaining \$11 million to pay for construction of the facility. It would then seek millions of dollars from five industries to make up some or all of the difference. In addition, the industries would pay for the raw water they received from the Town. Based on news reports, the only committed funding to date is a \$5.5 million State Senate infrastructure grant. Construction would take 3 years.

Until the notice of the December 3 Hearing, the only indication of the Town's interest in this property was in exercising its eminent domain power against the Huntley Station with respect to a raw water related temporary easement. Town Supervisor Joseph Emminger's September 5, 2018 letter to the Buffalo News states:

A further point of clarification for the public's knowledge; the Town is not seeking to "take over" the Huntley plant through eminent domain. Rather, the Town is exploring obtaining a temporary easement using eminent domain on the water intakes and waterlines only.

It is unclear why the Town now seeks a “portion” or undefined “portions” of the Huntley property for redevelopment depending on which notice of this hearing on which one relies.

## **II. The Town’s Public Hearing Notice is Defective**

The Notice for this public hearing is fatally deficient in terms of its identification of the interests and property the Town is proposing to acquire by eminent domain and the purported public purpose for its acquisition. The Notice simply refers to “real property interests” and the “proposed acquisition of portions of the former Huntley Power Plant property” located at 3500 River Road. There is no description of the nature of its taking - by fee or by easement or easements or, if by easement, whether such easement or easements are temporary and, if so, for what time period. Similarly, in the Notice there is no description or identification of which portion or portions of the Huntley Station the Town intends to acquire its unspecified and undefined interests. The Letter Notice refers to “a portion” and is accompanied by an aerial photo with delineated areas identified as “Huntley Power LLC - Proposed Eminent Domain Taking 62.4 Ac.” which includes shoreline lands owned by New York State and some of the lands in the BCP. These parallel notices are confusing at best.

The Notice is particularly perplexing against the backdrop of the prior public and private statements of the Town’s representatives, the Town Board’s prior actions with respect to the Huntley Station, and the notice and conduct of the December 3 Hearing. Prior to the December 3, 2018 hearing, the Town limited its interest to the acquisition of a temporary easement over the water intakes, ancillary facilities and waterlines pertaining to the distribution of raw water to the nearby industries while the Town upgraded its water treatment plant by building a raw water intake system to supply these companies. The December 3 Hearing notice broadened the Town’s purported purpose to include redevelopment of the Huntley Station without providing any description as to what it means or intends in the way of redevelopment.

The Town’s description of the public purposes for its proposed taking in its notice of the April 8, 2019 hearing does nothing to correct the deficiencies of the earlier notice for the December 3 Hearing, and adds new ones.

In the first instance, it is unclear whether the Town intends this hearing to be a continuation of the EDPL process it commenced with the December 3 Hearing, or whether the Town is starting the process over. If the former, the hearing is procedurally defective as (i) it is untimely under EDPL 204 and (ii) the Town lacks the authority to hold an additional hearing without having taken formal action to hold such adjourned hearing.

If the Town intends to start over, nowhere in the Notice nor the Letter Notice does it state this hearing is being held pursuant to EDPL Article 2. Both Notices simply repeat the two purported public purposes of its proposed acquisition for redevelopment/avoid blight and to

provide continued access to a critical raw water supply for the Town. While EDPL 202 does not require the condemnor to provide every detail of its intended project, the Town's Notice falls well short of the minimum. In fact, the Notice fails to provide any description of the intended project other than the short reference to the previously discussed deficient intended purposes of the project. The 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution provide that no person shall be deprived of their property without due process. Article 1, sec. 6 of the New York Constitution provides the same. Due process in the context of an EDPL 203 public hearing fundamentally includes notice of the project and public purpose for the taking and the nature of the taking. Here the Town has failed to provide such notice since it is impossible to determine the nature of the real property interests, the specific property which is the subject of the proposed taking, any sense of what the intended redevelopment project is and, as detailed below, the purported public purpose provided in the Notice is vague and contradictory. All of which is further confused by the information recently reported by Buffalo Business First, where it is represented that the Town's interest "is only in the 67 acres around the plant and water intake system" and that the "30 acres that served as a coal and raw materials storage area is not being considered by the town." (See, Buffalo Business First Article dated April 1, 2019).

As we stated at the December 3 Hearing, with respect to the first alleged public purpose, one can only ask redevelopment of what and as what? The Town has not disclosed nor publicly adopted any redevelopment plan for the Huntley Station, conceptual or otherwise. Its public actions consist of the Notice and Letter Notice, holding the December 3 Hearing and tonight's hearing, a notice under SEQRA that it intends to act as lead agency and a Full Environmental Assessment Form dated December 3, 2018 ("FEAF"). The most complete description of the redevelopment project for which the Town's acquisition is proposed is set forth in the FEAF as "economic development purposes" and "Potential Residential, Commercial, recreational and industrial redevelopment." (See, FEAF, Part I. A, D.1.a). Even this is contradicted by the same document which states there will be no new residential uses (Part I. D.1.f) and no new non-residential construction (Part I. D.1.g). Again, one is left with the question of redevelopment of what and as what.

This is particularly problematic since the Huntley Station is a complex property which poses very unique challenges to any redevelopment. To name a few, the Huntley Station is the site of a coal fired generating plant which operated for 100 years, it has 6 generating units retired in place, substantial and unique building improvements, significant utility equipment, as well as a variety of substantial easements across the property, in addition to the two pump houses owned by PeroxyChem and Sumitomo, respectively, which are used to supply raw water to those industries.

Similarly at odds with statutory and constitutional notice requirements is the Town's second purported purpose of providing "continued access to a critical raw water supply for the Town of Tonawanda." The Town already has "access to a critical raw water supply" from the

Niagara River through the Town's Water Treatment Plant and associated facilities. According to the Town's website ([www.tonawanda.ny.us](http://www.tonawanda.ny.us)), its Water Treatment Plant withdraws over 4 billion gallons of water annually to provide, after treatment, "safe, clean and abundant water" to the residents and many businesses within the Town and Village of Kenmore. Accordingly, the Town's statement of public purpose is at odds with reality as described on its own website.

If read in the context of recent history, that the stated purpose is the Town's pronouncements of maintaining a raw water supply to PeroxyChem, Sumitomo and the Town's other industries, such purpose is at odds with the reality of Huntley's recently executed agreement extensions providing the industries access through the Huntley Station to draw raw water. In any event, it is impossible to clear up the inherent ambiguity of either the Notice or the Letter Notice on its face.

Finally, the failure to tie the purpose into the nature of the taking and whether it is a temporary easement, permanent easement or fee taking is confusing and contradictory in light of the Town's recent and consistent pronouncements in regard to obtaining a temporary easement to provide raw water to these industries. The Town's public notice failed to meet the minimum requirements of notice under the due process clauses of the United States and New York Constitutions and the EDPL.

### **III. There is No Public Use, Benefit or Purpose for the Proposed Taking**

#### **a. Redevelopment Scenario**

The Town's purported public purpose of "timely and appropriate redevelopment" is disingenuous at best. The Huntley Station is a retired coal fired electric generating power plant owned by a large, sophisticated company with decades of experience of owning and operating generating plants and, where necessary, marketing and selling retired plants for redevelopment. As noted earlier, this property has numerous, substantial and uniquely designed building improvements, six generating units retired in place, a fly ash landfill, pump house buildings owned by third parties, substantial easements, environmental permitting requirements and utility-owned equipment. The marketing and redevelopment of such a property presents unique challenges with which NRG is much more familiar and adept at handling based on its energy industry expertise and specific experience with the disposition of closed generating plants. Again, as noted above, NRG has made steady progress in marketing the Huntley Station.

Meanwhile, the Town in the face of the complex challenges presented by the Huntley Station and with no experience in the ongoing maintenance, redevelopment or marketing of such a property has announced its proposed taking with no articulated plan or a general description, conceptual or otherwise, of what it means by "timely and appropriate redevelopment." Its own FEAF is contradictory. If the Town's undisclosed redevelopment project contemplates the

transfer of the property to a third party private owner then such project, and the purported public purpose behind it, are fatally deficient since such action would violate the Gift and Loan Clause of Art. 8, sec. 1 of the New York Constitution. This Clause severely restricts a Town's power to convey property to a private entity. Any such conveyance must be for the dominant public purpose for which the property was originally acquired by eminent domain with any benefits to the private party being incidental. Here, the exact opposite would be true since the dominant benefit would go to the private developer or entities purchasing the property from the Town or, with respect to the raw water supply purpose, the industries receiving the benefit of the water supply.

In short, the Town has failed to identify any public purpose to support the exercise of its power of eminent domain in acquiring the Huntley Station for its undisclosed redevelopment project.

**b. Raw Water Supply**

Similarly, the stated public purpose to "provide continued access to a critical raw water supply for the Town of Tonawanda" falls before the constitutional and New York statutory requirements. In this regard, Huntley and NRG state its objections based on assumptions drawn from the defective and contradictory hearing Notice. On its face, the stated public purpose of providing continued access to the water supply is unsupported by fact in light of the Town's Water Treatment Plant which, by its own admission, already is configured to withdraw 4 billion gallons of water per year for the residents and many of the businesses in the Town. Accordingly, the need behind the stated public purpose is nonexistent, thus undermining the validity of the public purpose.

Again, if the announced purpose is read in the context of the Town's previous public and private pronouncements and actions regarding the maintenance of a raw water supply to the industries, such purpose is equally illusory whether for a permanent or temporary easement. Huntley is now, as its predecessors have for almost 100 years, continuing to provide access to the intake bays and screening facilities under its SPDES permit to allow the industries to draw raw water from the Niagara River and pump it to their respective facilities by the successful negotiation of agreements extending the industries access to raw water through the Huntley Station lands and infrastructure.

In short, there is no public purpose where there is no need.

**IV. The Town Lacks the Regulatory Authority to Undertake its Proposed Project**

As the Appellate Division, 4<sup>th</sup> Department recently held in *National Fuel Gas Supply Corporation v. Schueckler*, any eminent domain power in connection with a public project that

cannot be legally completed is necessarily extinguished. The Town has not obtained the required water withdrawal permit which is a prerequisite to the exercise of its power of eminent domain here. Specifically, NYSDEC regulations prohibit an action to “take, condemn or acquire an existing water withdrawal system with a capacity equal to or greater than the threshold volume,” without first obtaining a permit. 6 NYCRR § 601.6(g). The threshold volume is a water withdrawal system with a capacity equal to or greater than one hundred thousand gallons per day. 6 NYCRR § 601.2(p). PeroxyChem and Sumitomo are withdrawing approximately 25 million gallons of water per day. The issuance of a water withdrawal permit does not convey any property rights in either real or personal property so the Town cannot simply acquire the existing Huntley permit. 6 NYCRR § 601.12(o). Water withdrawal permits are not transferable. 6 NYCRR § 621(c)(2). Huntley is not aware of the Town having made any application to the NYSDEC for a water withdrawal permit. The NYSDEC has not noticed the initiation of a review under SEQRA for such an application nor does it reference such in its February 11, 2019 Response Letter. Accordingly, the Town cannot commence a condemnation proceeding without first obtaining a water withdrawal permit.

Similarly, other aspects of ongoing maintenance and operations of the Huntley Station and landfill are performed under permits which the Town has not acquired. NYSDEC Policy DEP 01-1 provides:

Permit transfers require the consent of the Transferor by way of the application form or other documentation in acquisition or facility/property use agreements signifying conveyance of rights to permits held by the Transferor. When no evidence of consent is provided, the department will not consider a permit transfer and the permit seeker must make application for a new permit.

To Huntley’s knowledge, the Town has not applied for any permits and it certainly has not requested Huntley’s consent to any permit transfers.

#### **V. Town Law 64 (2) Bars the Town’s Proposed Acquisition**

Town Law 64 (2) confers the power of eminent domain on a Town so long as the acquisition is required for a public purpose. For the reasons I have already discussed there is no public purpose behind the Town’s proposed acquisition of any or all of the Huntley Station.

However, for the sake of argument, assuming a public purpose did exist for either the redevelopment of the property or a conveyance of a portion of the Huntley Station to allow the industries to continue to draw water from the Niagara River, such conveyance is subject to a permissive referendum. That is, if the Town intends to convey any part of the Huntley Station to a private party and provided that such conveyance would comport with the requirements of the

Gift and Loan Clause of Art. 8 sec. 1 of the New York Constitution, it can only do so after a permissive referendum has authorized it to do so. Accordingly, consistent with *National Fuel Gas Supply Corporation v. Schueckler*, since there has been no permissive referendum the Town lacks a key prerequisite to exercising its eminent domain power with respect to the Huntley Station.

#### **VI. Excess Taking**

It is a well-established principle that a condemnor has no right to condemn real property interests in excess of what is needed for its public purposes.

As explained previously, it is unclear what the Town is contemplating in this proposed taking and similarly unclear as to the public purpose so it can only be concluded that the Town's proposed acquisition of the Huntley Station is well in excess of the confusing, incomplete and contradictory public purposes described in its Notice.

#### **VII. Just Compensation**

Pursuant to the United States and New York Constitutions, the EDPL, and Town Law 64 (2) the Town is required to pay just compensation for any property interests it acquires with respect to the Huntley Station. "Just compensation" has been interpreted by New York courts to mean "sure and certain" compensation. The Town's power to tax is not unlimited. It is therefore important to point out that there is no evidence to suggest the Town has the financial resources to satisfy its obligation to pay just compensation for the Huntley Station. This is highlighted by its \$27.2 million Water Treatment Plant upgrade being entirely dependent on New York State grant monies and financial contributions/investment by the town industries.

#### **VIII. The Project Description Is Inadequate Under SEQRA**

At its November 19, 2018 meeting, the Town Board approved a resolution to adopt the "Notice of Intent for Lead Agency" ("Lead Agency Notice") in connection with the SEQRA review of the condemnation proceedings it intends to commence with respect to the Huntley Station. The Lead Agency Notice is identical to the EDPL public hearing Notice with respect to its lack of detail in describing either the purpose or the scope of the proposed project. The Lead Agency Notice fails to identify or provide any accompanying information as to the nature or extent of redevelopment the Town intends to undertake or the nature of the real property interests it intends to acquire.

In connection with the Lead Agency Notice, Town Counsel then transmitted Part I of the FEAF to potentially interested and involved parties. The FEAF is designed specifically for Type I Actions, defined by the governing SEQRA regulations as "those actions and projects that are

more likely to require the preparation of an EIS” and the fact that an action or project has been designated as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment.

Part 1 of the FEAF is intended to provide details that will help the Lead Agency understand the location, size, type and characteristics of the proposed project in order to evaluate its potential environmental effects in connection with its obligations under SEQRA. The Town’s FEAF identifies both River Road parcels in its project description, but omits all detail regarding the intended action, again offering only a vague reference to “[p]otential residential, commercial, recreational and industrial redevelopment.” (See, FEAF, Part D.1.a). The inclusion of both the 3500 River Road and 4293 River Road parcels is problematic since the Notice no longer includes 4293 River Road. So the undefined project in the Notice is different than the undefined project in the FEAF.

Despite designating the Huntley Station site for “redevelopment” the FEAF identifies no proposed commercial or residential uses, subdivision or construction of any kind. The Town claims that none of the 210 acres will be physically disturbed by the proposed action, nor will the project use or create a new demand for water, generate liquid wastes, create stormwater runoff or an increase in traffic or noise or demand for energy. Substantively, it fails to acknowledge the increase in traffic that will result from any redevelopment (particularly because there is no traffic associated with the facility now); potential archeological impacts associated with construction and ground disturbance; the impact upon the Erie Canal which runs through a portion of the project site; the impact of continuing water withdrawals at current levels or expanded (as suggested by the Town) upon potential entrainment and impingement beyond what is currently contemplated by winding down current withdrawal operations by developing alternatives; construction impacts related to modifying the SPDES permitted waste disposal system, and potential to have to develop additional disposal systems; and potential impacts of developing a new water system as described by the Town. The FEAF is replete with omissions and contradictions, rendering it impossible for the Lead Agency to engage in any significant review, evaluation or understanding of the proposed project’s details, scope and environmental impact.

In its February 11, 2019 response to the Lead Agency Notice, the NYSDEC highlighted many of the potential adverse impacts identified in the FEAF, and also recognized the lack of information provided by the Town:

Without knowing the specifics of the Town of Tonawanda’s proposed eminent domain action, it is not clear how that action will impact the issues referenced in paragraphs 4-6 above.

In short, the lack of project detail in this deficient FEAF precludes the Lead Agency from accurately identifying and analyzing the relevant areas of environmental concern, an indispensable element of SEQRA and a requirement of a Lead Agency’s ultimate determination

of significance. Even as undefined as the Town's project is, it is evident it will require a comprehensive environmental impact study under SEQRA which is frustrated by the incomplete and contradictory quality of the FEAF.

### **CONCLUSION**

The Town's proposed acquisition by eminent domain of real property interests at the Huntley Station is beyond the Town's lawful powers and in violation of (i) the 5<sup>th</sup> and 14<sup>th</sup> amendments of the United States Constitution, (ii) Article 1, sections 6 and 7 of the New York State Constitution, (iii) Town Law 64 (2), (iv) the EDPL and (v) the State Environmental Quality Review Act ("SEQRA"). Respectfully, the Town should not go forward with this project.

**April 8, 2019**  
**Town of Tonawanda Town Board**  
**Eminent Domain Procedure Law Article 2 Public Hearing**  
**“Acquisition of the former Huntley Power Plant located at 3500 River Road,**  
**Tonawanda, New York (tax parcel ID # 64.16 – 1 – 1.2)”**

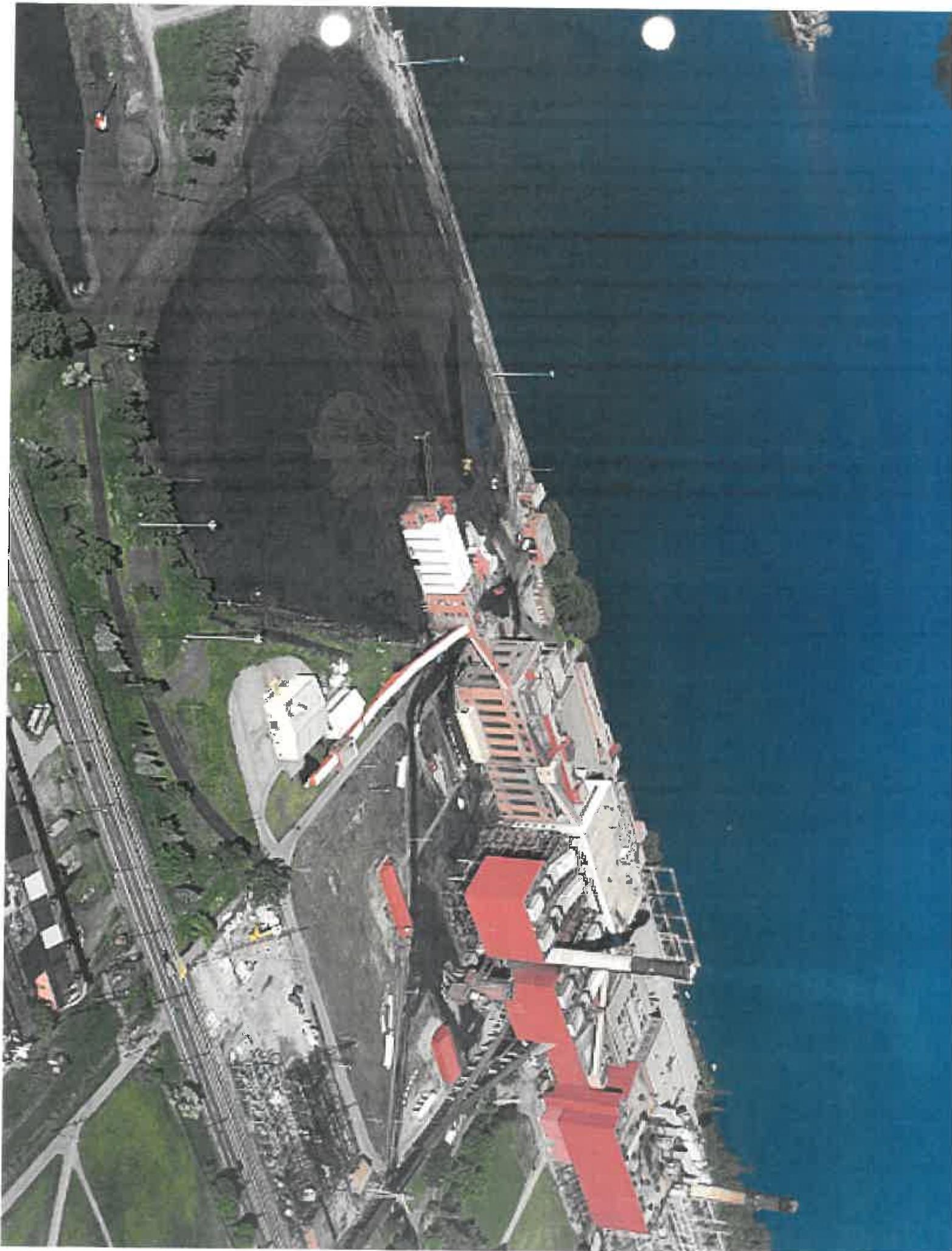
**EXHIBITS**

**To Statement of Elizabeth A. Holmes on behalf of**  
**Huntley Power LLC and NRG Energy, Inc.**

- 1. Copy of the Aerial photo blowup of Huntley Station**
- 2. Ken-Ton Bee /Buffalo News Legal Notice of April 8, 2019 Public Hearing**
- 3. Notice of Hearing Letter to Huntley Power LLC**
- 4. FMC (PeroxyChem) SPDES permit**
- 5. Supervisor Joseph Emminger Sept. 5, 2018 letter to the Buffalo News**
- 6. Buffalo News Articles**
  - a. January 24, 2018**
  - b. February 2, 2018**
  - c. August 15, 2018**
  - d. August 21, 2018**
  - e. September 20, 2018**
- 7. Buffalo Business First Article dated April 1, 2019**
- 8. December 3, 2018 Full Environmental Assessment Form & November 19, 2018 Notice of Intent for Lead Agency**
- 9. NYSDEC February 11, 2019 Response Letter**
- 10. 8 x 10 photos (6 ) of Huntley Station**

# **EXHIBIT 1**

**Copy of the Aerial photo blowup of  
Huntley Station**



## **EXHIBIT 2**

**Ken-Ton Bee/Buffalo News Legal Notice of  
April 8, 2019 Public Hearing**

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## NOTICE OF PUBLIC HEARING On April 8,



Placed on 3/28/2019 | Views: 22

Web ID 1496198

### NOTICE OF PUBLIC HEARING

On April 8, 2019 at 7:00 pm in Council Chambers of the Town of Tonawanda Municipal Building, 2919 Delaware Avenue, Kenmore, NY 14217, the Town of Tonawanda Town Board will conduct a public hearing regarding acquisition of real property interests and solicit comments regarding the proposed acquisition of portions of the former Huntley Power Plant property located at 3500 River Road, Tonawanda, New York (tax parcel id # 64.18-1-1.2) pursuant to New York Eminent Domain Procedure Law. There are no proposed alternate locations. The public purpose of the proposed acquisition is to secure the property to ensure its timely and appropriate redevelopment, provide public access, prevent blight through vacancy and to provide continued access to a critical raw water supply for the Town of Tonawanda. Comments may be made in person on April 8, 2019 or in writing to the Town Clerk prior to April 8, 2019.

BY ORDER OF THE TOWN BOARD, TOWN OF TONAWANDA, ERIE COUNTY, N.Y.

Marguerite Greco,  
Town Clerk  
Town of Tonawanda, N.Y.

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**— LEGAL NOTICE —**

Peehler LLC. Filed 2/4/19. Office: Erie Co. SSNY designated as agent for process & shall mail to: C/O Christian Peehler, 313 Hamilton Ave., Tonawanda, NY 14150. Purpose: General.

Mar. 6, 13, 20, 27; Apr. 3, 10

**— LEGAL NOTICE —****NOTICE OF PUBLIC HEARING**

On April 8, 2019 at 7:00 pm in Council Chambers of the Town of Tonawanda Municipal Building, 2919 Delaware Avenue, Kenmore, NY 14217, the Town of Tonawanda Town Board will conduct a public hearing regarding acquisition of real property interests and solicit comments regarding the proposed acquisition of portions of the former Huntley Power Plant property located at 3500 River Road, Tonawanda, New York (tax parcel Id. # 64.16-1-1.2) pursuant to New York Eminent Domain Procedure Law. There are no proposed alternate locations. The public purpose of the proposed acquisition is to secure the property to ensure its timely and appropriate redevelopment, provide public access, prevent blight through vacancy and to provide continued access to a critical raw water supply for the Town of Tonawanda. Comments may be made in person on April 8, 2019 or in writing to the Town Clerk prior to April 8, 2019.

BY ORDER OF THE TOWN BOARD, TOWN OF TONAWANDA, ERIE COUNTY, N.Y.

Marguerite Greco, Town Clerk

Town of Tonawanda, N.Y.

Dated: March 26, 2019

Mar. 27; Apr. 3

**— LEGAL NOTICE —****CORRECTED-LEGAL NOTICE****NOTICE TO BIDDERS**

NOTICE IS HEREBY GIVEN that on the 16 day of April, 2019 at 3:30 P.M., local time, in the Council Room of the Municipal Building, in the Village of Kenmore, N.Y., the Town Clerk on behalf of the Town Board of the Town of Tonawanda will publicly open and read all bids then received for the following:

# **EXHIBIT 3**

**Notice of Hearing Letter to Huntley Power LLC**



March 28, 2019

Via Certified Mail, Return Receipt

Huntley Power LLC  
c/o CT Corporation System  
111 Eighth Avenue  
New York, New York 10011

**Re: Huntley Power Plant  
Notice of Public Hearing – Town of Tonawanda, New York**

**To Whom it May Concern:**

We represent the Town of Tonawanda, New York relative to the above-referenced matter. This shall serve to notify you that on April 8, 2019 at 7:00 pm in Council Chambers of the Town of Tonawanda Municipal Building, 2919 Delaware Avenue, Kenmore, NY 14217, the Town of Tonawanda Town Board will conduct a public hearing to describe a potential acquisition of real property interests and solicit comments regarding the proposed acquisition of a portion of the former Huntley Power Plant property located at 3500 River Road, Tonawanda, New York (tax parcel Id. # 64.16-1-1.2), contemporaneously or in stages pursuant to New York Eminent Domain Procedure Law.

The public purpose of the proposed acquisition is to secure the property or properties to ensure appropriate level of public access, their timely and appropriate redevelopment, avoid blight and provide continued access to a critical raw water supply for the Town of Tonawanda. Please be advised, if you wish to challenge the proposed condemnation of the property or properties via judicial review, you may do so only on the basis of issues, facts, and objections raised at this hearing or through written comments provided to the Tonawanda Town Board.

Comments may be made in person on or by written submission no later than April 8, 2019.

Please contact the undersigned with any questions or concerns.

Very truly yours,

HOPKINS SORGI & ROMANOWSKI PLLC

  
Marc A. Romanowski, Esq.

**HOPKINS SORGI & ROMANOWSKI PLLC**  
Attorneys at Law  
26 Mississippi Street, Suite 400 • Buffalo, New York 14203  
Office: 716-427-7100 • Fax: 716-424-2171 • www.hsr-legal.com

**Huntley Power Plant, Notice of Public Hearing – Town of Tonawanda, New York**  
**March 28, 2019**  
**Page 2**

**MAR/mab**

**cc: Marguerite Greco, Town Clerk, Town of Tonawanda, New York**  
**Mario A. Giacobbe, Esq., Town Attorney, Town of Tonawanda, New York**  
**Mark R. McNamera, Esq.**  
**Huntley Power Plant - 3500 River Road, Tonawanda, New York**  
**Huntley Power LLC, c/o NRG Energy Tax Dept. – 221 Carnegie Center, Princeton, New Jersey**

**HOPKINS SORGI & ROMANOWSKI PLLC**  
Attorneys at Law  
26 Mississippi Street, Suite 400 • Buffalo, New York 14203  
Office: 716-427-7100 • Fax: 716-424-2171 • [www.hsr-legal.com](http://www.hsr-legal.com)

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## NOTICE OF PUBLIC HEARING On April 8,



Placed on 3/28/2019 | Views: 22

Web ID 1484188

### NOTICE OF PUBLIC HEARING

On April 8, 2019 at 7:00 pm in Council Chambers of the Town of Tonawanda Municipal Building, 2919 Delaware Avenue, Kenmore, NY 14217, the Town of Tonawanda Town Board will conduct a public hearing regarding acquisition of real property interests and solicit comments regarding the proposed acquisition of portions of the former Huntley Power Plant property located at 3500 River Road, Tonawanda, New York (tax parcel id. # 64 16-1-1.2) pursuant to New York Eminent Domain Procedure Law. There are no proposed alternate locations. The public purpose of the proposed acquisition is to secure the property to ensure its timely and appropriate redevelopment, provide public access, prevent blight through vacancy and to provide continued access to a critical raw water supply for the Town of Tonawanda. Comments may be made in person on April 8, 2019 or in writing to the Town Clerk prior to April 8, 2019.

BY ORDER OF THE TOWN BOARD, TOWN OF TONAWANDA, ERIE COUNTY, N.Y.

Marguerite Greco,  
Town Clerk  
Town of Tonawanda, N.Y.

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# **EXHIBIT 4**

**FMC (PeroxyChem) SPDES Permit**



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
**State Pollutant Discharge Elimination System (SPDES)**  
**DISCHARGE PERMIT**

Industrial Code: 2819  
 Discharge Class (CL): 03  
 Toxic Class (TX): T  
 Major Drainage Basin: 01  
 Sub Drainage Basin: 01  
 Water Index Number: O-158  
 Compact Area:

SPDES Number: NY 0008337  
 DEC Number: 9-1464-00040/00015  
 Effective Date (EDP): October 1, 2013  
 Expiration Date (ExDP): September 30, 2018  
 Modification Dates (EDPM):

Form 100

This SPDES permit is issued in compliance with Title 8 of Article 17 of the Environmental Conservation Law of New York State and in compliance with the Clean Water Act, as amended, (33 U.S.C. §1251 et seq.) (hereinafter referred to as "the Act").

**PERMITTEE NAME AND ADDRESS**

Name: FMC Corporation - Industrial Chemicals Group  
 Street: 35 Sawyer Avenue  
 City: Tonawanda

Attention: President of Industrial Chemicals  
 State: NY Zip Code: 14150

is authorized to discharge from the facility described below:

**FACILITY NAME AND ADDRESS**

Name: FMC Corporation - Peroxygens Division  
 Location (C,T,V): Tonawanda  
 Facility Address: 35 Sawyer Avenue  
 City: Tonawanda  
 NYTM -E: 179.8  
 From Outfall No.: 001

County: Erie  
 State: NY Zip Code: 14150  
 NYTM - N: 4765.1  
 at Latitude: 42 ° 58 ' 23 " & Longitude: 78 ° 52 ' 47 "  
 Class: A

into receiving waters known as: Niagara River

and; (list other Outfalls, Receiving Waters & Water Classifications)

in accordance with: effluent limitations; monitoring and reporting requirements; other provisions and conditions set forth in this permit; and 6 NYCRR Part 750-1.2(a) and 750-2.

**DISCHARGE MONITORING REPORT (DMR) MAILING ADDRESS**

Mailing Name: FMC Corporation - Peroxygens Division  
 Street: 35 Sawyer Avenue  
 City: Tonawanda

State: NY Zip Code: 14150  
 Phone: (716) 879-0401

Responsible Official or Agent: David Vance - Resident Manager

This permit and the authorization to discharge shall expire on midnight of the expiration date shown above and the permittee shall not discharge after the expiration date unless this permit has been renewed, or extended pursuant to law. To be authorized to discharge beyond the expiration date, the permittee shall apply for permit renewal not less than 180 days prior to the expiration date shown above.

**DISTRIBUTION:**

CO BWP - Permit Coordinator  
 RWE  
 RPA  
 EPA Region II - Michelle Josilo  
 M. Child, IJC  
 NYSDOH District Office

|   |               |
|---|---------------|
| Deputy Chief Permit Administrator: Stuart M. Fox  |               |
| Address: NYS DEC Division of Environmental Permits<br>625 Broadway<br>Albany, NY 12233-1750 |               |
| Signature: <i>Stuart M. Fox</i>   | Date: 8/23/13 |

**PERMIT LIMITS, LEVELS AND MONITORING DEFINITIONS**

| OUTFALL                         | WASTEWATER TYPE   | RECEIVING WATER  | EFFECTIVE   | EXPIRING   |             |
|---------------------------------|---|--|---|--|-------------|
|                                 | This cell describes the type of wastewater authorized for discharge. Examples include process or sanitary wastewater, storm water, non-contact cooling water. | This cell lists classified waters of the state to which the listed outfall discharges. | The date this page starts in effect. (e.g. EDP or EDPM) | The date this page is no longer in effect. (e.g. ExDP) |             |
| PARAMETER                       | MINIMUM   | MAXIMUM  | UNITS   | SAMPLE FREQ.   | SAMPLE TYPE |
| e.g. pH, TRC, Temperature, D.O. | The minimum level that must be maintained at all instants in time.  | The maximum level that may not be exceeded at any instant in time.                     | SU, °F, mg/l, etc.                                      |  |             |

| PARAMETER | EFFLUENT LIMIT   | PRACTICAL QUANTITATION LIMIT (ML)   | ACTION LEVEL   | UNITS   | SAMPLE FREQUENCY  | SAMPLE TYPE   |
|-----------|--|---|--|---|---|---|
|           | Limit types are defined below in Note 1. The effluent limit is developed based on the more stringent of technology-based standards, required under the Clean Water Act, or New York State water quality standards. The limit has been derived based on existing assumptions and rules. These assumptions include receiving water hardness, pH and temperature; rates of this and other discharges to the receiving stream; etc. If assumptions or rules change the limit may, after due process and modification of this permit, change. | For the purposes of compliance assessment, the analytical method specified in the permit shall be used to monitor the amount of the pollutant in the outfall to this level, provided that the laboratory analyst has complied with the specified quality assurance/quality control procedures in the relevant method. Monitoring results that are lower than this level must be reported, but shall not be used to determine compliance with the calculated limit. This ML can be neither lowered nor raised without a modification of this permit. | Action Levels are monitoring requirements, as defined below in Note 2, that trigger additional monitoring and permit review when exceeded. | This can include units of flow, pH, mass, Temperature, concentration, etc. Examples include µg/l, lbs/d, etc. | Examples include Daily, 3/week, weekly, 2/month, monthly, quarterly, 2/yr and yearly. | Examples include grab, 24 hour composite and 3 grab samples collected over a 6 hour period. |

**Note 1: DAILY DISCHARGE:** The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. For pollutants expressed in units of mass, the 'daily discharge' is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the 'daily discharge' is calculated as the average measurement of the pollutant over the day. **DAILY MAX:** The highest allowable daily discharge. **DAILY MIN:** The lowest allowable daily discharge. **MONTHLY AVG (daily avg):** The highest allowable average of daily discharges over a calendar month, calculated as the sum of each of the daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. **RANGE:** The minimum and maximum instantaneous measurements for the reporting period must remain between the two values shown. **2 DAY ARITHMETIC MEAN (7 day average):** The highest allowable average of daily discharges over a calendar week. **12MRA (twelve month rolling avg):** The average of the most recent twelve month's monthly averages. **30 DAY GEOMETRIC MEAN (30 d geo mean):** The highest allowable geometric mean of daily discharges over a calendar month, calculated as the antilog of: the sum of the log of each of the daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. **7 DAY GEOMETRIC MEAN (7 d geo mean):** The highest allowable geometric mean of daily discharges over a calendar week.

**Note 2: ACTION LEVELS:** Routine Action Level monitoring results, if not provided for on the Discharge Monitoring Report (DMR) form, shall be appended to the DMR for the period during which the sampling was conducted. If the additional monitoring requirement is triggered as noted below, the permittee shall undertake a short-term, high-intensity monitoring program for the parameter(s). Samples identical to those required for routine monitoring purposes shall be taken on each of at least three consecutive operating and discharging days and analyzed. Results shall be expressed in terms of both concentration and mass, and shall be submitted no later than the end of the third month following the month when the additional monitoring requirement was triggered. Results may be appended to the DMR or transmitted under separate cover to the same address. If levels higher than the Action Levels are confirmed, the permit may be reopened by the Department for consideration of revised Action Levels or effluent limits. The permittee is not authorized to discharge any of the listed parameters at levels which may cause or contribute to a violation of water quality standards. The additional monitoring requirement is triggered upon receipt by the permittee of any monitoring results in excess of the stated Action Level.

**PERMIT LIMITS, LEVELS AND MONITORING**

| OUTFALL No. | WASTEWATER TYPE                     |         |       | RECEIVING WATER  | EFFECTIVE   | EXPIRING       |
|-------------|-------------------------------------|---------|-------|------------------|-------------|----------------|
| 001         | Process and Non-Process Wastewaters |         |       | Niagara River    | EDPM        | ExDP           |
| PARAMETER   | MINIMUM                             | MAXIMUM | UNITS | SAMPLE FREQUENCY | SAMPLE TYPE | FOOTNOTES (FN) |
| pH          | 6.0                                 | 9.0     | SU    | Daily            | Grab        |                |

| PARAMETER                    | EFFLUENT LIMIT or CALCULATED LEVEL |           | ACTION LEVEL | UNITS   | SAMPLE FREQUENCY | SAMPLE TYPE       | FN  |
|------------------------------|------------------------------------|-----------|--------------|---------|------------------|-------------------|-----|
|                              | Monthly Avg                        | Daily Max |              |         |                  |                   |     |
| Flow                         | Monitor                            | Monitor   |              | MGD     | Daily            | Meter             |     |
| Solids, Suspended            | 340                                | 680       |              | lbs/day | Weekly           | 24-hr Composite   | 1   |
| Solids, Dissolved            | Monitor                            | Monitor   |              | lbs/day | Weekly           | 24-hr Composite   | 1   |
| Temperature                  | Monitor                            | 95        |              | deg F   | Weekly           | Grab              | 2   |
| Ammonia (as N)               | Monitor                            | 200       |              | lbs/day | Weekly           | 24-hr Composite   | 1   |
| Mercury <sup>4</sup> , Total | NA                                 | 50        |              | ng/l    | Quarterly        | 24-Hour Composite | 4,5 |

\* See Mercury Minimization Program - Page 6 of this permit.

| OUTFALL No. | WASTEWATER TYPE  |  |  | RECEIVING WATER                  | EFFECTIVE | EXPIRING |
|-------------|--|--|--|----------------------------------|-----------|----------|
| 01B & 01C   | Internal Waste Streams (see internal waste stream description below) |  |  | Niagara River<br>Via Outfall 001 | EDPM      | ExDP     |

| PARAMETER | MINIMUM | MAXIMUM | UNITS | SAMPLE FREQUENCY | SAMPLE TYPE | FOOTNOTES (FN) |
|-----------|---------|---------|-------|------------------|-------------|----------------|
| pH        | 6.0     | 9.0     | SU    | Weekly           | Grab        |                |

| PARAMETER         | EFFLUENT LIMIT or CALCULATED LEVEL |           | ACTION LEVEL | UNITS | SAMPLE FREQUENCY | SAMPLE TYPE | FN |
|-------------------|------------------------------------|-----------|--------------|-------|------------------|-------------|----|
|                   | Monthly Avg                        | Daily Max |              |       |                  |             |    |
| Solids, Suspended | Monitor                            | Monitor   |              | mg/l  | BiMonthly        | Grab        |    |
| Solids, Dissolved | Monitor                            | Monitor   |              | mg/l  | BiMonthly        | Grab        |    |

| OUTFALL No. | WASTEWATER TYPE       | RECEIVING WATER                  | EFFECTIVE | EXPIRING |
|-------------|-----------------------|----------------------------------|-----------|----------|
| 01C         | Internal Waste Stream | Niagara River via<br>Outfall 001 | EDP       | ExDP     |

| PARAMETER      | EFFLUENT LIMIT or CALCULATED LEVEL |            | ACTION LEVEL | UNITS | SAMPLE FREQUENCY | SAMPLE TYPE        | FN |
|----------------|------------------------------------|------------|--------------|-------|------------------|--------------------|----|
|                | Monthly Avg                        | Daily Max. |              |       |                  |                    |    |
| Cyanide, Total | Monitor                            | 0.000      |              | mg/l  | BiMonthly        | Grab               | 3  |
| Thiocyanate    |                                    |            | 1.6          | mg/l  | BiMonthly        | 24-hr<br>Composite |    |

| OUTFALL No. | WASTEWATER TYPE                               | RECEIVING WATER                  | EFFECTIVE | EXPIRING |
|-------------|---|----------------------------------|-----------|----------|
| 01D         | Internal Waste Stream - T110 Process Effluent | Niagara River via<br>Outfall 001 | EDP       | ExDP     |

| PARAMETER      | EFFLUENT LIMIT or CALCULATED LEVEL |            | ACTION LEVEL | UNITS | SAMPLE FREQUENCY | SAMPLE TYPE | FN   |
|----------------|------------------------------------|------------|--------------|-------|------------------|-------------|------|
|                | Monthly Avg                        | Daily Max. |              |       |                  |             |      |
| Flow           | Monitor                            | Monitor    |              | GPD   | Once/2 weeks     | Calculated  |      |
| Mercury, Total | Monitor                            | 50         |              | ug/l  | Once/2 weeks     | Grab        | 4, 6 |

**SPECIAL CONDITIONS:**

**DISCHARGE NOTIFICATION REQUIREMENTS - Sign Maintenance:** The permittee shall periodically inspect the outfall identification sign(s) in order to ensure they are maintained, are still visible, and contain information that is current and factually correct. Signs that are damaged or incorrect shall be replaced within 3 months of inspection. **Data Retention:** The permittee shall retain records for a minimum period of 5 years in accordance with 6NYCRR Part 750-1.12(b)(2) and Part 750-2.5(c)(1). These records, which include discharge monitoring reports (DMRs) and annual reports, must be retained at a repository accessible to the public. This repository shall be open to the public, at a minimum, during normal daytime business hours. The repository may be the business office, wastewater treatment plant, village, town, city, or county clerk's office, the local library, or other location approved by the Department.

**Internal Waste Streams:**

- Outfall 001 - final effluent -see monitoring location page for exact monitoring location.
- Outfall 01B - effluent from boiler house demineralizer regenerant treatment tank.
- Outfall 01C - effluent from plant II neutralization system.
- Outfall 01D - effluent from Tank 110

**Footnotes:**

- (1) Limitations and monitoring requirements for all parameters except flow, pH, Total Cyanide, Thiocyanate and temperature shall be net.
- (2) This limitation may only be exceeded during periods when Niagara Mohawk Power Company uses thermal treatment methods to control zebra mussels in its water lines, or when conducting in-stream thermal studies. A designated 250 sf mixing zone located approximately 2.2 feet down river and 21 feet across flow is allowed as per 6NYCRR part 704.3 based on the Thermal Study Plan submitted on January 23, 2009.
- (3) Use EPA Method 335.2 for Total Cyanide, or other approved method to meet permit requirements.
- (4) Monitoring Only requirement for the first 3 years of this initial permit for Outfall 001, and for the first 4 years 11 months for Outfall 01D. Then the limit of 50 ng/l applies upon conclusion of the "monitoring only" periods.
- (5) The 24-Hour composite sample shall be a series of grab samples taken within a 24-hour period, then lab composited. Sampling shall be conducted as required in 6NYCRR Part 750-2.5 (e).
- (6) For the internal sampling point 01D, EPA Method 245.1 or 245.2 may be used for mercury sampling if results are greater than 500 ng/l, otherwise, Method 1631 must be used.

**Special Conditions:**

- 1.) No biocides, corrosion/scale inhibitors or other water treatment chemicals are authorized for use in systems discharging to outfall 001 except the Barclay Water Management water treatment chemicals; Oxogon C, RT-740, Polytreat TL200, PS931, Dispersall FE-10, as well as Ammonium Thiocyanate and Guanidine Sulfate. If the use of other water treatment chemicals is contemplated application must be made to the Department. Use of an authorized chemical in a manner contrary to the manufacturer's label direction is prohibited. To monitor compliance with this requirement the permittee shall maintain a logbook of all water treatment chemicals noting for each chemical the amount and location of each application.
- 2.) Modification of the facility cooling water intake must not occur without prior Department approval. The permittee must submit written notification, including detailed descriptions and plans, to the NYS DEC Steam Electric Unit; the Director of the Bureau of Water Compliance Program; and both the Regional Permit Administrator and the Regional Water Engineer, Region 2, at least 60 days prior to any proposed change which would result in the alteration of the permitted operation, location, design, construction or capacity of the cooling water intake structure. The permittee must submit with the written notification a demonstration that the change

reflects the best technology available for minimizing adverse environmental impacts pursuant to 6 NYCRR §704.5 and Section 316(b) of the Clean Water Act. As determined by NYS DEC, a permit modification application in accordance with 6 NYCRR Part 621 may be required. In the event that the present owner/operator of the intake from the Niagara River modifies the present intake or ceases to operate, the permittee shall, within 60 days of Department notification, submit an approvable application for a modification of this permit to ensure that the cooling water intake system will meet the requirements of best technology available under 6 NYCRR 704.5 and Section 316(b) of the federal Clean Water Act. A full review of this facility would need to be undertaken to determine Best Technology Available (as required by Commissioner Policy #52).

## MERCURY MINIMIZATION PROGRAM – Industrial Facilities

1. **General** - The permittee shall develop, implement, and maintain a Mercury Minimization Program (MMP) for those outfalls which have mercury effluent limits. The MMP is required because the 50 ng/L permit limit exceeds the statewide water quality based effluent limit (WQBEL) of 0.70 nanograms/liter (ng/L) for Total Mercury. The goal of the MMP is to reduce mercury effluent levels in pursuit of the WQBEL. Note – the mercury-related requirements in this permit conform to the mercury Multiple Discharge Variance specified in NYSDEC policy *DOW 1.3.10*.
2. **MMP Elements** - The MMP shall be documented in narrative form and shall include any necessary drawings or maps. Other related documents already prepared for the facility may be used as part of the MMP and may be incorporated by reference. As a minimum, the MMP shall include an on-going program consisting of: periodic monitoring; an acceptable control strategy which will become enforceable under this permit; and, submission of periodic status reports.
  - A. **Monitoring** - The permittee shall conduct periodic monitoring designed to quantify and, over time, track the reduction of mercury. Wastewater treatment plant influents and effluents, and other outfalls shall be monitored in accordance with the minimum frequency specified on the mercury permit limits page. Additionally, key locations in the wastewater and/or stormwater collection systems, and known or potential mercury sources, including raw materials, shall be monitored at the above frequency during the first year of the MMP. Monitoring of key locations and known/potential sources may be reduced during subsequent years if downstream outfalls have maintained mercury levels less than 50 ng/l during the previous year. Additional monitoring must be completed as may be required elsewhere in this permit or upon Department request. Monitoring shall be coordinated so that the results can be effectively compared between internal locations and final outfalls.

All permit-related wastewater and stormwater mercury compliance point (outfall) monitoring shall be performed using EPA Method 1631. Use of EPA Method 1669 during sample collection is recommended. Unless otherwise specified, all samples should be grabs. Monitoring at influent and other locations tributary to compliance points may be performed using either EPA Methods 1631 or 245.7. Monitoring of raw materials, equipment, treatment residuals, and other non-wastewater/non-stormwater substances may be performed using other methods as appropriate.
  - B. **Control Strategy** - An acceptable control strategy is required for reducing mercury discharges via cost-effective measures, which may include, but is not limited to: source identification; replacement of mercury-containing equipment, materials, and products with mercury-free alternatives where environmentally preferable; more stringent control of tributary waste streams; remediation; and/or installation of new or improved treatment facilities. Required monitoring shall also be used, and supplemented as appropriate, to determine the most effective way to operate the wastewater treatment system(s) to ensure effective removal of mercury while maintaining compliance with other permit requirements.
  - C. **Annual Status Report** - An annual status report shall be submitted to the Regional Water Engineer and to the Bureau of Water Permits summarizing: (a) all MMP monitoring results for the previous year; (b) a list of known and potential mercury sources; (c) all action undertaken pursuant to the strategy during the previous year; (d) actions planned for the upcoming year; and, (e) progress toward the goal. The first annual status report is due one year after the permit is modified to include the MMP requirement and follow-up status reports are due annually thereafter. A file shall be maintained containing all MMP documentation which shall be available for review by NYSDEC representatives. Copies shall be provided upon request.
3. **MMP Modification** - The MMP shall be modified whenever: (a) changes at the facility or within the collection system increase the potential for mercury discharges; (b) actual discharges exceed 50 ng/L; (c) a letter from the Department identifies inadequacies in the MMP; or (d) pursuant to a permit modification.

**SPECIAL CONDITIONS - INDUSTRY BEST MANAGEMENT PRACTICES**

1. **General** - The permittee shall develop, maintain, and implement a Best Management Practices (BMP) plan to prevent releases of significant amounts of pollutants to the waters of the State through plant site runoff; spillage and leaks; sludge or waste disposal; and stormwater discharges including, but not limited to, drainage from raw material storage.

The BMP plan shall be documented in narrative form and shall include the 13 minimum BMPs and any necessary plot plans, drawings, or maps. Other documents already prepared for the facility such as a Safety Manual or a Spill Prevention, Control and Countermeasure (SPCC) plan may be used as part of the plan and may be incorporated by reference. A copy of the current BMP plan shall be submitted to the Department as required in item (2.) below and a copy must be maintained at the facility and shall be available to authorized Department representatives upon request.

2. **Compliance Deadlines** - The BMP plan shall be reviewed annually and shall be modified whenever (a) changes at the facility materially increase the potential for releases of pollutants; (b) actual releases indicate the plan is inadequate, or (c) a letter from the Department identifies inadequacies in the plan. The permittee shall certify in writing, as an attachment to the December Discharge Monitoring Report (DMR), that the annual review has been completed. All BMP plan revisions (with the exception of SWPPPs - see item (4.B.) below) must be submitted to the Regional Water Engineer within 30 days. Note that the permittee is not required to obtain Department approval of the BMP plan (or of any SWPPPs) unless notified otherwise. Subsequent modifications to or renewal of this permit does not reset or revise these deadlines unless a new deadline is set explicitly by such permit modification or renewal.

3. **Facility Review** - The permittee shall review all facility components or systems (including but not limited to material storage areas; in-plant transfer, process, and material handling areas; loading and unloading operations; storm water, erosion, and sediment control measures; process emergency control systems; and sludge and waste disposal areas) where materials or pollutants are used, manufactured, stored or handled to evaluate the potential for the release of pollutants to the waters of the State. In performing such an evaluation, the permittee shall consider such factors as the probability of equipment failure or improper operation, cross-contamination of storm water by process materials, settlement of facility air emissions, the effects of natural phenomena such as freezing temperatures and precipitation, fires, and the facility's history of spills and leaks. The relative toxicity of the pollutant shall be considered in determining the significance of potential releases.

The review shall address all substances present at the facility that are identified in Tables 6-10 of SPDES application Form NY-2C (available at [http://www.des.ny.gov/docs/permits\\_si\\_operations\\_pdf/form2c.pdf](http://www.des.ny.gov/docs/permits_si_operations_pdf/form2c.pdf)) or that are required to be monitored for by the SPDES permit.

4. **A. 13 Minimum BMPs** - Whenever the potential for a release of pollutants to State waters is determined to be present, the permittee shall identify BMPs that have been established to prevent or minimize such potential releases. Where BMPs are inadequate or absent, appropriate BMPs shall be established. In selecting appropriate BMPs, the permittee shall consider good industry practices and, where appropriate, structural measures such as secondary containment and erosion/sediment control devices and practices. USEPA guidance for development of stormwater elements of the BMP such as *Developing Your Stormwater Pollution Prevention Plan - A Guide for Industrial Operators*, February 2009, EPA 833-B-09-002. As a minimum, the plan shall include the following BMPs:

- |                                     |   |                                 |
|-------------------------------------|---|---------------------------------|
| 1. BMP Pollution Prevention Team    | 6. Security   | 10. Spill Prevention & Response |
| 2. Reporting of BMP Incidents       | 7. Preventive Maintenance                             | 11. Erosion & Sediment Control  |
| 3. Risk Identification & Assessment | 8. Good Housekeeping                                  | 12. Management of Runoff        |
| 4. Employee Training                | 9. Materials/Waste Handling, Storage, & Compatibility | 13. Street Sweeping             |
| 5. Inspections and Records          |   |                                 |

Note that for some facilities, especially those with few employees, some of the above BMPs may not be applicable. It is acceptable in these cases to indicate "Not Applicable" for the portion(s) of the BMP Plan that do not apply to your facility, along with an explanation.

**B. Stormwater Pollution Prevention Plans (SWPPP) Required for Discharges of Stormwater From Construction Activity to Surface Waters** - As part of BMP #11, a SWPPP shall be developed prior to the initiation of any site disturbance of one acre or more of uncontaminated area. Uncontaminated area means soils or groundwater which are free of contamination by any toxic or non-conventional pollutants identified in Tables 6-10 of SPDES application Form NY-2C. Disturbance of any size contaminated area(s) and the resulting discharge of contaminated stormwater is not authorized by this permit unless the discharge is under State or Federal oversight as part of a remedial program or after review by the Regional Water Engineer; nor is such discharge authorized by any SPDES general permit for stormwater discharges. SWPPPs are not required for discharges of stormwater from construction activity to groundwaters.

The SWPPP shall conform to the *New York Standards and Specifications for Erosion and Sediment Control* and *New York State Stormwater Management Design Manual*, unless a variance has been obtained from the Regional Water Engineer, and to any local requirements. The permittee shall submit a copy of the SWPPP and any amendments thereto to the local governing body and any other authorized agency having jurisdiction or regulatory control over the construction activity at least 30 days prior to soil disturbance. The SWPPP shall also be submitted to the Regional Water Engineer if contamination, as defined above, is involved and the permittee must obtain a determination of any SPDES permit modifications and/or additional treatment which may be required prior to soil disturbance. Otherwise, the SWPPP shall be submitted to the Department only upon request. When a SWPPP is required, a properly completed *Notice of Intent (NOI)* form shall be submitted (available at [www.dec.ny.gov/chemical/43133.html](http://www.dec.ny.gov/chemical/43133.html)) prior to soil disturbance. Note that submission of a NOI is required for informational purposes; the permittee is not eligible for and will not obtain coverage under any SPDES general permit for stormwater discharges, nor are any additional permit fees incurred. SWPPPs must be developed and submitted for subsequent site disturbances in accordance with the above requirements. The permittee is responsible for ensuring that the provisions of each SWPPP are properly implemented.

5. **Required Sampling For "Hot Spot" Identification** - Development of the BMP plan shall include sampling of waste stream segments for the purpose of pollutant "hot spot" identification. The economic achievability of effluent limits will not be considered until plant site "hot spot" sources have been identified, contained, removed or minimized through the imposition of site specific BMPs or application of internal facility treatment technology. For the purposes of this permit condition a "hot spot" is a segment of an industrial facility (including but not limited to soil, equipment, material storage areas, sewer lines etc.) which contributes elevated levels of problem pollutants to the wastewater and/or stormwater collection system of that facility. For the purposes of this definition, problem pollutants are substances for which treatment to meet a water quality or technology requirement may, considering the results of waste stream segment sampling, be deemed unreasonable. For the purposes of this definition, an elevated level is a concentration or mass loading of the pollutant in question which is sufficiently higher than the concentration of that same pollutant at the compliance monitoring location so as to allow for an economically justifiable removal and/or isolation of the segment and/or B.A.T. treatment of wastewaters emanating from the segment.
6. **Facilities with Petroleum and/or Chemical Bulk Storage (PBS and CBS) Areas** - Compliance must be maintained with all applicable regulations including those involving releases, registration, handling and storage (6NYCRR 595-599 and 612-614). Stormwater discharges from handling and storage areas should be eliminated where practical.

**A. Spill Cleanup** - All spilled or leaked substances must be removed from secondary containment systems as soon as practical and for CBS storage areas within 24 hours, unless written authorization is received from the Department. The containment system must be thoroughly cleaned to remove any residual contamination which could cause contamination of stormwater and the resulting discharge of pollutants to waters of the State. Following spill cleanup the affected area must be completely flushed with clean water three times and the water removed after each flushing for proper disposal in an on-site or off-site wastewater treatment plant designed to treat such water and permitted to discharge such wastewater. Alternately, the permittee may test the first batch of stormwater following the spill cleanup to determine discharge acceptability. If the water contains no pollutants it may be discharged. Otherwise it must be disposed of as noted above. See *Discharge Monitoring* below for the list of parameters to be sampled for.

**B. Discharge Operation** - Stormwater must be removed before it compromises the required containment system capacity. Each discharge may only proceed with the prior approval of the permittee staff person responsible for ensuring SPDES permit compliance. Bulk storage secondary containment drainage systems must be locked in a closed position except when the operator is in the process of draining accumulated stormwater. Transfer area secondary containment drainage systems must be locked in a closed position during all transfers and must not be reopened unless the transfer area is clean of contaminants. Stormwater discharges from secondary containment systems should be avoided during periods of precipitation. A logbook shall be maintained on site noting the date, time and personnel supervising each discharge.

**C. Discharge Screening** - Prior to each discharge from a secondary containment system the stormwater must be screened for contamination. All stormwater must be inspected for visible evidence of contamination. Additional screening methods shall be developed by the permittee as part of the overall BMP Plan, e.g. the use of volatile gas meters to detect the presence of gross levels of gasoline or volatile organic compounds. If the screening indicates contamination, the permittee must collect and analyze a representative sample of the stormwater. If the water contains no pollutants it may be discharged. Otherwise it must either be disposed of in an on site or off site wastewater treatment plant designed to treat and permitted to discharge such wastewater or the Regional Water Engineer can be contacted to determine if it may be discharged without treatment.

**D. Discharge Monitoring** - Unless the discharge from any bulk storage containment system outlet is identified in the SPDES permit as an outfall with explicit effluent and monitoring requirements, the permittee shall monitor the outlet as follows:

**(i) Bulk Storage Secondary Containment Systems:**

(a) The volume of each discharge from each outlet must be monitored. Discharge volume may be calculated by measuring the depth of water within the containment area times the wetted area converted to gallons or by other suitable methods. A representative sample shall be collected of the first discharge following any cleaned up spill or leak. The sample must be analyzed for pH, the substance(s) stored within the containment area and any other pollutants the permittee knows or has reason to believe are present\*\*.

(b) Every fourth discharge from each outlet must be sampled for pH, the substance(s) stored within the containment area and any other pollutants the permittee knows or has reason to believe are present\*\*.

**(ii) Transfer Area Secondary Containment Systems:**

The first discharge following any spill or leak must be sampled for flow, pH, the substance(s) transferred in that area and any other pollutants the permittee knows or has reason to believe are present\*\*.

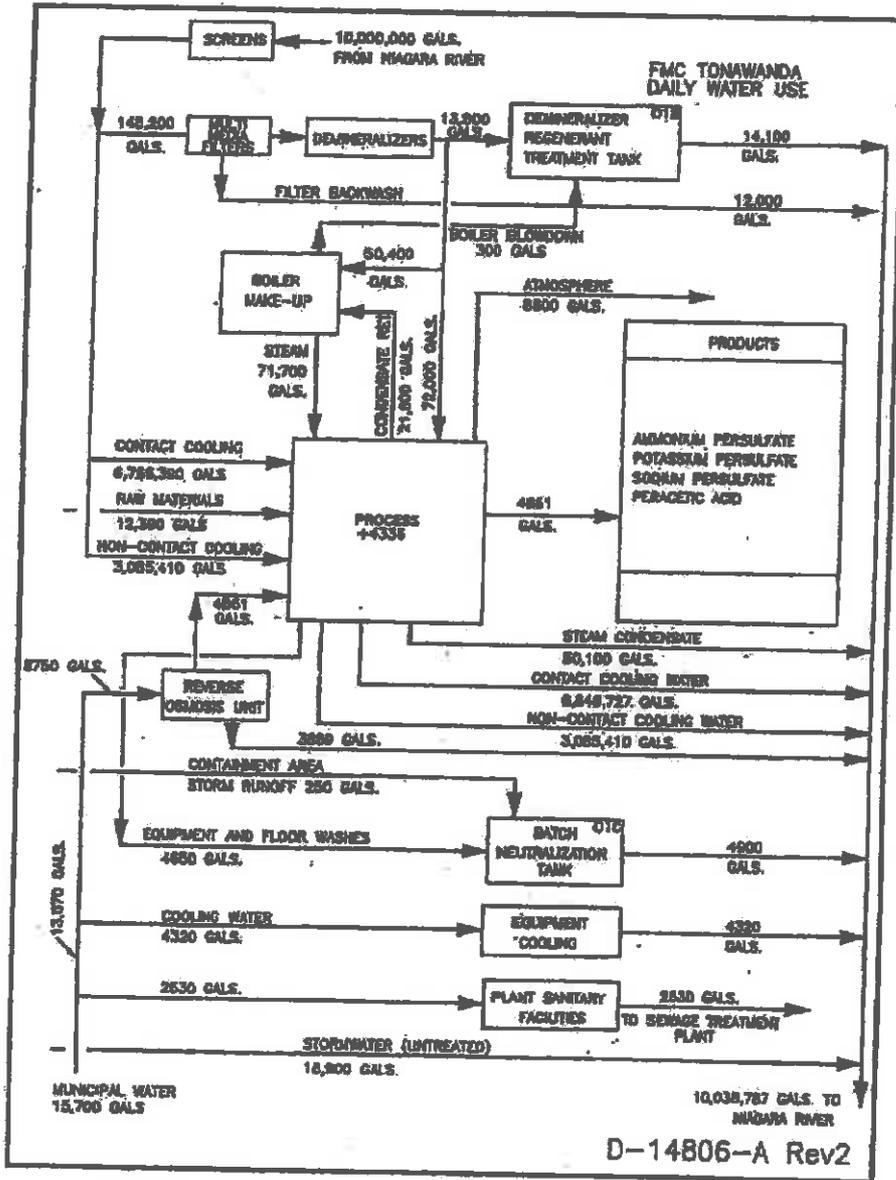
**E. Discharge Reporting** - Any results of monitoring required above, excluding screening data, must be submitted to the Department by appending them to the corresponding DMR. Failure to perform the required discharge monitoring and reporting shall constitute a violation of the terms of the SPDES permit.

**F. Prohibited Discharges** - In all cases, any discharge which contains a visible sheen, foam, or odor, or may cause or contribute to a violation of water quality is prohibited. The following discharges are prohibited unless specifically authorized elsewhere in this SPDES permit: spills or leaks, tank bottoms, maintenance wastewaters, wash waters where detergents or other chemicals have been used, tank hydrotest and ballast waters, contained fire fighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant additives, and unnecessary discharges of water or wastewater into secondary containment systems.

\* Discharge includes stormwater discharges and snow and ice removal. If applicable, a representative sample of snow and/or ice should be collected and allowed to melt prior to assessment.

\*\* If the stored substance is gasoline or aviation fuel then sample for oil & grease, benzene, ethylbenzene, naphthalene, toluene and total xylenes (EPA method 602). If the stored substance is kerosene, diesel fuel, fuel oil, or lubricating oil then sample for oil & grease and polynuclear aromatic hydrocarbons (EPA method 610). If the substance(s) are listed in Tables 6-8 of SPDES application form NY-2C then sampling is required. If the substance(s) are listed in NY-2C Tables 9-10 sampling for appropriate indicator parameters may be required, e.g. BOD5 or toxicity testing. Contact the facility inspector for further guidance. In all cases flow and pH monitoring is required.





## GENERAL REQUIREMENTS

- A. The regulations in 6 NYCRR Part 750 are hereby incorporated by reference and the conditions are enforceable requirements under this permit. The permittee shall comply with all requirements set forth in this permit and with all the applicable requirements of 6 NYCRR Part 750 incorporated into this permit by reference, including but not limited to the regulations in paragraphs B through H as follows:
- B. **General Conditions**
- |  |   |
|--|---|
| 1. Duty to comply                                | 6NYCRR Part 750-2.1(e) & 2.4                |
| 2. Duty to reapply                               | 6NYCRR Part 750-1.16(a)                     |
| 3. Need to halt or reduce activity not a defense | 6NYCRR Part 750-2.1(g)                      |
| 4. Duty to mitigate                              | 6NYCRR Part 750-2.7(f)                      |
| 5. Permit actions                                | 6NYCRR Part 750-1.1(c), 1.18, 1.20 & 2.1(h) |
| 6. Property rights                               | 6NYCRR Part 750-2.2(b)                      |
| 7. Duty to provide information                   | 6NYCRR Part 750-2.1(i)                      |
| 8. Inspection and entry                          | 6NYCRR Part 750-2.1(a) & 2.3                |
- C. **Operation and Maintenance**
- |                                   |  |
|-----------------------------------|--|
| 1. Proper Operation & Maintenance | 6NYCRR Part 750-2.8                      |
| 2. Bypass                         | 6NYCRR Part 750-1.2(a)(17), 2.8(b) & 2.7 |
| 3. Upset                          | 6NYCRR Part 750-1.2(a)(94) & 2.8(c)      |
- D. **Monitoring and Records**
- |                           |   |
|---------------------------|---|
| 1. Monitoring and records | 6NYCRR Part 750-2.5(a)(2), 2.5(c)(1), 2.5(c)(2), 2.5(d) & 2.5(a)(6) |
| 2. Signatory requirements | 6NYCRR Part 750-1.8 & 2.5(b)  |
- E. **Reporting Requirements**
- |  |                                      |
|--|--------------------------------------|
| 1. Reporting requirements  | 6NYCRR Part 750-2.5, 2.6, 2.7 & 1.17 |
| 2. Anticipated noncompliance   | 6NYCRR Part 750-2.7(a)               |
| 3. Transfers   | 6NYCRR Part 750-1.17                 |
| 4. Monitoring reports  | 6NYCRR Part 750-2.5(e)               |
| 5. Compliance schedules  | 6NYCRR Part 750-1.14(d)              |
| 6. 24-hour reporting   | 6NYCRR Part 750-2.7(e) & (d)         |
| 7. Other noncompliance   | 6NYCRR Part 750-2.7(e)               |
| 8. Other information   | 6NYCRR Part 750-2.1(f)               |
| 9. Additional conditions applicable to a POTW                        | 6NYCRR Part 750-2.9                  |
| 10. Special reporting requirements for discharges that are not POTWs | 6NYCRR Part 750-2.6                  |
- F. **Planned Changes**
- The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
    - The alteration or addition to the permitted facility may meet of the criteria for determining whether facility is a new source in 40 CFR §122.29(b); or
    - The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, or to notification requirements under 40 CFR §122.42(a)(1); or

### **GENERAL REQUIREMENTS continued**

- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

In addition to the Department, the permittee shall submit a copy of this notice to the United States Environmental Protection Agency at the following address: U.S. EPA Region 2, Clean Water Regulatory Branch, 290 Broadway, 24<sup>th</sup> Floor, New York, NY 10007-1866.

#### **G. Notification Requirement for POTWs**

1. All POTWs shall provide adequate notice to the Department and the USEPA of the following:
  - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; or
  - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
  - c. For the purposes of this paragraph, adequate notice shall include information on:
    - i. the quality and quantity of effluent introduced into the POTW, and
    - ii. any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

POTWs shall submit a copy of this notice to the United States Environmental Protection Agency, at the following address:

U.S. EPA Region 2, Clean Water Regulatory Branch, 290 Broadway, 24th Floor, New York, NY 10007-1866.

#### **H. Sludge Management**

The permittee shall comply with all applicable requirements of 6 NYCRR Part 360.

## RECORDING, REPORTING AND ADDITIONAL MONITORING REQUIREMENTS

- A. The monitoring information required by this permit shall be summarized, signed and retained for a period of at least five years from the date of the sampling for subsequent inspection by the Department or its designated agent. Also, monitoring information required by this permit shall be summarized and reported by submitting;

(if box is checked) completed and signed Discharge Monitoring Report (DMR) forms for each month reporting period to the locations specified below. Blank forms are available at the Department's Albany office listed below. The first reporting period begins on the effective date of this permit and the reports will be due no later than the 28th day of the month following the end of each reporting period.

(if box is checked) an annual report to the Regional Water Engineer at the address specified below. The annual report is due by February 1 each year and must summarize information for January to December of the previous year in a format acceptable to the Department.

(if box is checked) a monthly "Wastewater Facility Operation Report..." (form 92-15-7) to the:  
 Regional Water Engineer  County Health Department or Environmental Control Agency  
and/or specified below

Send the original (top sheet) of each DMR page to:  
Department of Environmental Conservation  
Division of Water, Bureau of Water Compliance  
625 Broadway, Albany, New York 12233-3506  
Phone: (518) 402-8177

Send the first copy (second sheet) of each DMR page to:  
Department of Environmental Conservation  
Regional Water Engineer, Region 9  
270 Michigan Avenue  
Buffalo, New York 14203  
Phone: 716-851-7200

Send an additional copy of each DMR page to:

- B. Monitoring and analysis shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.
- C. More frequent monitoring of the discharge(s), monitoring point(s), or waters of the State than required by the permit, where analysis is performed by a certified laboratory or where such analysis is not required to be performed by a certified laboratory, shall be included in the calculations and recording of the data on the corresponding DMRs.
- D. Calculations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.
- E. Unless otherwise specified, all information recorded on the DMRs shall be based upon measurements and sampling carried out during the most recently completed reporting period.
- F. Any laboratory test or sample analysis required by this permit for which the State Commissioner of Health issues certificates of approval pursuant to section 502 of the Public Health Law shall be conducted by a laboratory which has been issued a certificate of approval. Inquiries regarding laboratory certification should be directed to the New York State Department of Health, Environmental Laboratory Accreditation Program.

# **EXHIBIT 5**

**Supervisor Joseph Emminger Sept. 5, 2018 letter  
to the Buffalo News**

## Letter: Town of Tonawanda wants NRG cooperation

*By Staff | Published September 5, 2018*

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**As supervisor of the Town of Tonawanda, I appreciate the support of The Buffalo News editorial board in efforts to ensure that various industries located in our town are guaranteed an uninterrupted supply of raw water for their various manufacturing processes.**

**However, there are a couple of items in your recent editorial that need clarification.**

**If the current supply of raw water provided to industries by the NRG-owned water intakes is interrupted, then the industries would be forced to pay a much higher rate for treated, potable water. The higher costs for potable water isn't feasible and would have a devastating, long term consequences regarding the future of the operations of these industries in our region.**

**A further point of clarification for the public's knowledge; the town is not seeking to "takeover" the Huntley plant through eminent domain. Rather, the town is exploring obtaining a temporary easement using eminent domain on the water intakes and water lines only.**

**It is our sincere hope that we do not have to travel down the eminent domain route. We would prefer that NRG work with us and the affected industries to guarantee that this supply of raw water continue until the town can build its own raw water facility.**

### ADVERTISEMENT

**The Town is working with our State and Federal representatives to keep these jobs in Tonawanda.**

9/11/2018

Letter. Town of Tonawanda wants NRG cooperation – The Buffalo News

**We already have received significant financial commitments from the state as well as financial commitments from the industries to build the proposed \$27 million facility.**

**NRG has been telling everyone for the past 18 months that they are willing to cooperate to get the agreements extended. The ball is in NRG's court as to whether the company is going to collaborate with us or literally leave us high and**

**Joseph H. Emminger**

**Kenmore**

# **EXHIBIT 6**

## **Buffalo News Articles**

- a. January 24, 2018**
- b. February 2, 2018**
- c. August 15, 2018**
- d. August 21, 2018**
- e. September 20, 2018**

## **Tonawanda mulls project to supply plants with water; Possible end of Huntley's supply of coolant prompts \$27 million plan**

The Buffalo News (New York)

January 24, 2018 Wednesday, Buffalo News Edition

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Section: B,B; Pg. 9

Length: 1175 words

Byline: Nancy A. Fischer

News Staff Reporter

### **Body**

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The closing of the Huntley Generating Station is threatening to put a plug on 19 million gallons of "raw" water that several local industries get every day.

For nearly a century, the coal-fueled Huntley power plant generated electrical power and provided the untreated water from the river to neighboring manufacturers like PeroxyChem, tire maker Sumitomo and 3M O-Cell-Sponge for free or at a fraction of the cost of the treated water they could buy from the town. The untreated river water is used as coolants in manufacturing processes.

After it closed in 2016, Huntley continued providing cheap water to local manufacturers.

But the plant's owner, NRG Energy, has indicated it wants to get out of the water business, Town of Tonawanda Supervisor Joseph Emminger said. He said he and a dozen other officials met with NRG officials twice in the spring of 2016 and were again in discussions about the future of the plant this past June.

Without the long-term certainty of inexpensive water, industries that employ thousands of workers in Tonawanda could be jeopardized, Emminger said. So the town is investigating the possibility of building a \$27.2 million water pumping station and related infrastructure so it can sell manufacturers untreated water.

NRG spokesman David Gaier disputed Emminger's contentions, indicating NRG has contracts to supply water to neighboring businesses and is involved in negotiations with its water customers. He said the Town of Tonawanda is not involved in these negotiations.

"Those contracts are still in effect and will be for some time if both sides agree, and they can be amended if both parties agree," Gaier wrote.

Gaier said NRG didn't charge the other businesses for river water it supplied to them until after the Huntley Power Plant closed two years ago.

**Tonawanda mulls project to supply plants with water; Possible end of Huntley's supply of coolant prompts \$27 million plan**

Emminger said he was unable to identify whom he met with from NRG, due to a non-disclosure agreement.

"What do I gain from lying?" he said. "We are out to protect the industry. We did a raw water study based on what they told us and the industry told us. We have to react."

PeroxyChem Plant Manager Karl P. Kriger said he couldn't talk specifically about his company's water contract with NRG, but noted that it does have a specific termination date. He declined to say when PeroxyChem's contract with NRG ends and how much PeroxyChem pays NRG for about 10 million gallons a day.

"We've been negotiating with them to extend the agreement, but so far we haven't gained an agreement with them for that extension," Kriger said. "The future may or may not be certain depending on how that goes."

Kriger said PeroxyChem, which employs 120 people at its Tonawanda plant, has been working with the town to find an alternative water supplier.

"We need to secure access to river water to support the business and we are looking at a number of options," said Kriger. "We've been getting water from NRG and it's predecessors for more than 75 years and we are required to have an economical supply of water ... which is used as a non-contact coolant water."

Kriger said PeroxyChem officials are considering building their own pumping station to obtain river water, but added, "We would be happy to work with the town and have them provide it for us, which does eliminate the need for personnel to attend to that process."

Both Emminger and Kriger said the certainty of access to water was a big issue for manufacturers, especially since NRG has closed the Huntley Power Plant.

Two other Tonawanda businesses, DuPont and Indeck Yerkes, which runs a steam generating facility, do not rely on NRG water. They jointly operate a water pumping station but it is in need of updating, and Dupont and Indeck Yerkes have asked to instead be included as potential customers of a new town raw water pumping station, said Michael Kessler, water department director for the town.

Kessler said the town is not considering taking over the Huntley pumping station.

"First of all, it is too old. If we do this we would put new lines in," said Kessler.

Kessler said the town is instead considering building a pumping station to provide up to 27 million gallons of water a day to five businesses: PeroxyChem, Sumitomo, 3M O-Cell-Sponge, Dupont and Indeck Yerkes.

Emminger said the town could begin selling untreated water to those five companies, but it would first need to build intakes for raw water and a new pumping station and related infrastructure. The town will seek state and federal grants for the \$27.2 million project, he said. It would take about three years to build the facilities.

Tonawanda mulls project to supply plants with water; Possible end of Huntley's supply of coolant prompts \$27 million plan

"Water and sewer infrastructure is economic development," Emminger said. "These jobs at these plants are family-sustaining jobs - good paying jobs. We are talking over 3,000 jobs. Hopefully we can keep them here and bring more."

The town already provides residential and commercial customers with treated water from the Niagara River. But the treated water costs \$3.60 to \$3.90 per 1,000 gallons.

That price is "astronomical" compared to the .22 to .25 cents per 1,000 gallons that untreated water costs, said Kessler.

Kessler said the five industries, which would benefit the most from the new pumping station, have agreed to help pay for costs the town would incur. But those companies have balked at the \$27 million price tag.

Emminger said town officials have met with state and federal leaders, as well as Empire State Development and New York Power Authority to seek funding over the past three weeks.

State Sen. Chris Jacobs, R-Buffalo, said he will push for state funding to help Tonawanda provide untreated water to the industries, but said funding decisions will be up to the Gov. Andrew Cuomo and Empire State Development.

"We have to make sure there is dependable raw water to those manufacturers," said Jacobs. "It's a two-pronged challenge for Tonawanda. They've already taken a hit because Huntley was its largest taxpayer. They cannot afford to lose anyone else."

Assemblyman Robin Schimminger, D-Kenmore, said finding state funding would be difficult to secure this budget year, with the state facing a \$4.4 billion deficit. But state and federal aid may be available, he said.

"The pending unavailability of raw water coming from the Huntley intake is one of the ancillary consequences of the closing of Huntley," said Schimminger, who noted that this is something Cuomo and Empire State Development should address.

Emminger, in a recent opinion column in the Buffalo News, asked why the state is stepping in to help Niagara Falls, providing \$20 million to address sanitary sewer overflows, "but forgot about the rest of us."

"The industries, not the town, would pay for this project and they have no problem paying .22 to .25 cents per gallon for the water, the problem is the upfront costs to build it. We've got to get the costs down," Emminger said.

Town officials thinks the town could raise \$600,000 to \$800,000 a year selling water to the manufacturers, Emminger said. That would help offset the \$2 million a year the town is no longer receiving from Huntley as a payment in lieu of taxes.

Load-Date: January 24, 2018

## **Let the water flow; Town of Tonawanda must ensure that industries can keep operating**

**The Buffalo News (New York)**

**February 2, 2018 Friday, Buffalo News Edition**

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**Section: A,A; Pg. 8**

**Length: 456 words**

### **Body**

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Town of Tonawanda officials seem to be doing the best they can to respond to the imminent end to the 19 million-gallon-a-day "raw" water provided to several local industries now that the Huntley Generating Station has shut down.

The town may build a pumping station that would provide up to 27 million gallons of water each day to five businesses: PeroxyChem, Sumitomo, 3M O-Cel-O Sponge, DuPont and Indeck Yerkes.

But at \$27.2 million it will be neither cheap nor quick, with three years to completion.

State and federal grants would come in handy but there is no guarantee, especially when the state is facing its own \$4.4 billion deficit. Federal funds can get caught in Washington's political gears.

Elected officials have to find a way because, as Town Supervisor Joseph Emminger said: "Water and sewer infrastructure is economic development."

At stake are 3,000 jobs from the industries that relied for several decades on raw water from the Huntley plant. PeroxyChem, which employs 120 people at its Tonawanda plant and has been working with the town to find an alternative water supplier, said it uses the resource as a "non-contact coolant water."

The Huntley closing in 2016 did not entirely cut off the resource. Instead of getting it for free, Huntley continued providing "cheap" water to local manufacturers. But the plant's owner, NRG Energy, wants out of the water business, according to the town, although company officials dispute that conclusion.

To the local industries dependent upon flowing raw water, it really does not matter who said what and when. They just want to know whether the resource will be available.

The potential of the town building its own facility has been met with enthusiasm by the Clean Air Coalition, Kenmore Teachers Association and United Steelworkers, District 4. The collective group, in a letter to the editor, supported the idea of creating a facility that would be more accountable to the public. And there is the possibility that the town could raise \$600,000 to \$800,000 a year selling the water to other manufacturers. It also might take the sting out of losing \$2 million a year from Huntley as a payment in lieu of taxes.

**Let the water flow; Town of Tonawanda must ensure that industries can keep operating**

**State Sen. Chris Jacobs, R-Buffalo, said he will push for state funding. He added that funding decisions remain with the governor and Empire State Development. Assemblyman Robin Schimminger, D-Kenmore, mentioned the state's deficit and brought up the possibility of federal aid. He added the helpful reminder about the "ancillary consequences of closing Huntley" and said ESD and the governor should address the issue.**

**Getting necessary state help to fund the project may be too heavy an economic lift and federal funding may be wishful thinking. But it's worth trying.**

**Load-Date: February 2, 2018**

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**End of Document**

## **Town weighing drastic measures to keep cheap water flowing; Eminent domain may be used at NRG plant**

The Buffalo News (New York)

August 15, 2018 Wednesday, Buffalo News Edition

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Section: C,C; Pg. 26

Length: 1033 words

Byline: Stephen T. Watson

News Staff Reporter

### **Body**

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The Town of Tonawanda is considering using eminent domain to take over the former Huntley Power Plant to ensure that the plant continues to provide the 19 million gallons of untreated water used every day by nearby manufacturers.

Even if the town is successful, acquiring the generating station from NRG Energy through eminent domain is only a short-term solution, according to town officials. Over the long term, the town wants to upgrade its water treatment plant to directly provide "raw" water to Sumitomo Rubber USA, DowDuPont and other industrial customers.

Building a new water-pumping station and other necessary infrastructure would cost an estimated \$27.2 million, but the town is seeking millions in state grants and pledges of funding from the companies to help pay for the project.

"We want to protect the jobs and the industries on our waterfront," Councilman Bill Conrad said.

The town hosted its latest meeting on the slippery water question on Friday with representatives from industry, various state agencies and the union whose members fill many of the jobs at the manufacturers. The town wants to move forward quickly on both eminent domain and improvements to its own treatment plant, but that requires buy-in from the state and companies.

Empire State Development and the state Department of Environmental Conservation did not immediately respond to a request for comment. One manufacturer, Sumitomo Rubber, said it is open to working with the town but wants more details on the cost. For its part, NRG said it is willing to cooperate with the town to reach a solution that works for everyone.

"The current contracts for water services are still in effect and could be amended or extended by mutual agreement," David Gaier, a spokesman for NRG in this region, said in an email.

**Town weighing drastic measures to keep cheap water flowing; Eminent domain may be used at NRG plant**

For nearly a century, the coal-fired Huntley plant generated electrical power and provided untreated water from the Niagara River to nearby manufacturers including PeroxyChem, the tiremaker Sumitomo and 3M Ocelo Sponge for free - or for far less than the cost of the treated water they could buy from the town.

The companies use the untreated water as a coolant in their manufacturing processes.

After NRG closed Huntley in 2016, the plant continued to provide low-cost water to the five neighboring manufacturers on a year-by-year basis. But town officials fear NRG will shut off access to that inexpensive water, saying thousands of jobs at the companies are at risk.

"That's what's making them nervous," said Michael Kessler, water department director for the town, referring to the companies whose agreements end in 2019.

Tonawanda officials say that, without a commitment from NRG to continue providing the untreated water, the town needs to consider all of its options to ensure the water continues to flow.

First, the Town Board at one of its next two meetings expects to vote to seek bids from law firms for the eminent domain work, Conrad said. The town then would hire one of the firms to guide it through that process.

If it is able to take over the plant through eminent domain, this would be a stop-gap measure to make sure the companies have access to untreated water during the period the town upgrades its own facility, Conrad and Kessler said.

"Eminent domain is something no one wants to do in government. Private property is private property," Conrad said, but NRG has kept the town "in the dark" about its plans.

The town wants to build a water-pumping station at its treatment plant, on Aqua Lane off River Road, and invest in the infrastructure needed to sell untreated water directly to the five manufacturers. Officials estimate that project would cost \$27.2 million.

The town hopes to receive about \$16 million in grant funding from the state, with \$5.5 million each coming from the State Senate, the Assembly and the executive branch, Kessler said.

If the town can whittle its share down to \$11 million or so, the town would borrow the cost and then work out a way for the five companies to contribute, Kessler said. Construction would take three years.

Negotiations continue, Conrad said, with the town weighing whether the companies would help pay for the upgrades upfront or pay an ongoing charge based on their usage. Payments could be spread out over three, five or 10 years, Kessler said, adding, "We would structure it based on what industry's thoughts are."

Sumitomo, which uses several million gallons of water per day from Huntley, has an agreement that expires in the spring, said Tim Noe, Sumitomo's senior vice president for manufacturing.

If that agreement ended tomorrow, Noe said, the company could continue making tires at the plant. But its backup plan includes fulfilling a portion of its water needs with treated water from the town, at a far higher cost.

"We're prepared for that, but it's not optimal," he said.

Town weighing drastic measures to keep cheap water flowing; Eminent domain may be used at NRG plant

The town sells treated water to its residential and commercial customers at a rate of \$3.60 to \$3.90 per 1,000 gallons, compared to the 22 to 25 cents per 1,000 gallons that untreated water costs.

Noe said Sumitomo appreciates the effort the town has put into reaching a solution. Everyone, he said, is seeking a reliable supply of water for the long haul.

The United Steelworkers Union represents about 1,600 employees at the companies, primarily at Sumitomo, DowDuPont and 3M, said David Wasiura, staff representative for the district that covers the Northeast and Puerto Rico.

"Our main focus is protecting their livelihood and making sure the companies are healthy companies," said Wasiura, whose members have lobbied state officials on behalf of the project.

NRG, for its part, downplayed any conflict between the company and local officials.

"NRG is aware of the importance of this water to these industrial customers, and we'll continue to work with them and with the Town of Tonawanda in good faith to find a solution concerning future operations of the water intake infrastructure," Gaier said.

The town already has conducted a feasibility study and has begun studying the project's environmental impact. Town officials also are asking the DEC, as part of the proposed expansion, to increase the amount of water the town is allowed to take out of the river.

**Load-Date: August 15, 2018**

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## **Don't let the water evaporate; Town of Tonawanda, NRG should forge long-term solution for Huntley plant**

The Buffalo News (New York)

August 21, 2018 Tuesday, Buffalo News Edition

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Section: A,A; Pg. 6

Length: 353 words

### **Body**

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Water is often taken for granted until the day it stops flowing. Wisely, the Town of Tonawanda has no intention of letting that day arrive for the manufacturers that depend on water from the former Huntley Generating Station.

NRG Energy shut down the coal-to-energy facility in March 2016, but the site has continued providing untreated water for use by area manufacturers Sumitomo Rubber USA, DowDuPont, 3M Ocelo Sponge, PeroxyChem and Indeck Yerkes. The companies use a total of about 19 million gallons of water per day from Huntley, for cooling in their manufacturing processes.

Town officials have talked about using eminent domain to take over the Huntley plant if they can't reach a new deal with NRG on providing the water at low cost. The current contract runs out next year. Eminent domain is a club that must be used sparingly, but in this case thousands of jobs could be at stake. A Buffalo News story this month noted that the United Steelworkers Union represents about 1,600 employees at the five companies. In total the companies represent about 3,000 jobs or more.

The "raw" water from Huntley costs much less than what the companies would pay to get water from the town.

Tonawanda sells treated water to its residential and commercial customers at a rate of \$3.60 to \$3.90 per 1,000 gallons, compared to 22 to 25 cents per 1,000 gallons for untreated water.

Even an eminent-domain takeover of the plant would only be a short-range solution. The town ultimately wants to upgrade its water-treatment plant. To build a new water-pumping station would cost the town an estimated \$27.2 million. The town is seeking \$16 million in state grants plus pledges of support from the companies to help pay for a new plant. The town plans to seek bids from law firms on eminent domain work.

NRG told The News it is willing to cooperate with the town to reach a solution. "The current contracts for water services are still in effect and could be amended or extended by mutual agreement," NRG's David Gaier said.

Let's hope NRG and the manufacturing companies come to new agreements soon, before the low-cost water dries up.

Don't let the water evaporate; Town of Tonawanda, NRG should forge long-term solution for Huntley plant

**Load-Date: August 21, 2018**

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**End of Document**

## **Tonawanda moves to take over Huntley water intakes, lines**

**The Buffalo News (New York)**

**September 20, 2018 Thursday, Buffalo News Edition**

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**Section: C,C; Pg. 27**

**Length: 400 words**

**Byline: Stephen T. Watson**

**News Staff Reporter**

### **Body**

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The Town of Tonawanda is getting ready to take over a portion of the former Huntley Generating Station to make sure local industries can continue to access the plant's untreated water.

The Town Board on Monday voted to hire a law firm to begin eminent domain proceedings against NRG Energy, the owner of the coal-fired plant.

The town would take control of the water intakes, water lines and other components of the plant used in the distribution of untreated, or raw, water to local industrial customers, said Supervisor Joseph Emminger.

NRG closed Huntley in 2016, but the plant continues to provide 19 million gallons of untreated water from the Niagara River to nearby manufacturers including PeroxyChem, the tiremaker Sumitomo and 3M Ocelo Sponge.

But NRG's water contract with the companies has expired, and town and company officials are worried NRG will stop providing the water the industrial customers say is essential to their operations.

Buying treated water from another supplier would be far too expensive, the companies have said.

Tonawanda officials say that, if negotiations with NRG aren't successful, they would use eminent domain to temporarily take over the portion of the plant needed to provide the untreated water. Emminger said the town would hold onto the plant's water system only until the town is able to build up its own distribution network.

The town wants to build a water-pumping station at its treatment plant, on Aqua Lane off River Road, and invest in the infrastructure needed to sell untreated water directly to the five manufacturers.

Officials estimate the project would cost \$27.2 million, but grants and company payments would cover most of the cost. The town on Monday hired the law firm of Hopkins, Sorgi and Romanowski to begin the eminent domain proceedings.

**Tonawanda moves to take over Huntley water intakes, lines**

However, he said, "Our ultimate goal is to avoid that." Emminger said the town at this point isn't negotiating with NRG but he knows NRG is pursuing talks with the companies.

"As the property owner of the Huntley power plant and its water intakes, we would prefer to hear directly from the Town of Tonawanda in order to begin a discussion regarding their specific needs for the site," NRG spokesman David Knox said in a statement Tuesday.

"In the meantime, the current contracts for water services are still in effect and we continue to seek to work with the other industries using water from our system."

**Load-Date: September 20, 2018**

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End of Document

# **EXHIBIT 7**

**Buffalo Business First Article  
dated April 1, 2019**

## **Huntley Station legal tug of war brewing between Tonawanda and NRG**

Buffalo Business First (New York)

April 1, 2019 Monday

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**Length:** 408 words

**Byline:** James Fink

### **Body**

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A legal tug-of-war may emerge as the Town of Tonawanda and NRG Energy Inc. both want to find a buyer or buyers for the now-closed Huntley Station.

Tonawanda wants to acquire 67 acres of the River Road former coal-burning energy plant that includes a water intake system which services a number of industries in the town including Sumitomo Rubber. The town wants to acquire the property through eminent domain and has set an April 8 public hearing as part of its legal requirements.

Houston-based NRG (NYSE: NRG) has been marketing the plant for more than one year and said eminent domain proceedings could, potentially, harm those efforts. The company may take its own legal actions against the town to prevent any eminent domain proceedings from advancing.

"Ideally, we'd love to get control of the site for re-development purposes," said Joseph Emminger, Town of Tonawanda supervisor. "We just can't sit around for 10 or 15 years waiting for something to happen."

NRG is working with both national and local firms on finding potential buyers. It has retained CBRE/Buffalo's Robert Dimmig, who for many years was the Town of Tonawanda economic development coordinator, to help sell the nearly 100-acre complex.

David Knox, NRG spokesman, said the company has been actively trying to "find a qualified buyer with the financial capacity and experience to redevelop the Huntley Station."

There has been some informal interest, sources said.

"The town's actions in this regard will likely dissuade current prospective buyers from continuing negotiations with NRG, and serve to alienate other interested buyers," Knox said. "The reality is that, contrary to its stated purpose, the town's actions will significantly delay the timeline to any redevelopment of the site versus the conventional marketing and redevelopment efforts currently underway by NRG."

Huntley Station legal tug of war brewing between Tonawanda and NRG

As much as finding a new life for the plant is a top economic development priority, Emminger said, so is maintaining the water intake system that handles as much as 20 million gallons a day.

"We can't do anything to harm those businesses," Emminger said.

Tonawanda's interest is only in the 67 acres around the plant and water intake system. Another 30 acres that served as a coal and raw materials storage area is not being considered by the town.

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**Load-Date:** April 3, 2019

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# **EXHIBIT 8**

**December 3, 2018 Full Environmental Assessment  
Form & November 19, 2018 Notice of Intent for  
Lead Agency**



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December 3, 2018

Via Certified Mail, Return Receipt  
New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203

Re: **Huntley Power Plant – Eminent Domain  
Town of Tonawanda, County of Erie, New York**

To Whom it May Concern:

I am writing on behalf of the Town of Tonawanda (Town) to notify potentially involved and interested agencies that this firm represents the Town with respect to an exercise of Eminent Domain over the parcels located at 3500 River Road and 4293 River Road. Enclosed for your review is Part 1 of the Full Environmental Assessment Form, project location maps, and a SEQR coordination mailing list.

Pursuant to 6 NYCRR 617.6, you and your agency are hereby notified that the Town intends to act as Lead Agency under the State Environmental Quality Review Act (SEQRA) for this project. Please note that Lead Agency must be agreed upon within thirty (30) days of this notice. Therefore, you and your agency have until January 3, 2019 to consent or contest, in writing, the establishment of the Town as Lead Agency for the environmental review of this project. Upon completion of your review, please provide written comment to the undersigned.

Thank you for your consideration of this matter.

Very truly yours,

HOPKINS SORGI & ROMANOWSKI PLLC

Marc A. Romanowski, Esq.

MAR/mab  
Encl.

**HOPKINS SORGI & ROMANOWSKI PLLC**  
Attorneys at Law  
26 Mississippi Street, Suite 400 • Buffalo, New York 14203  
Office: 716-427-7100 • Fax: 716-424-2171 • [www.hsr-legal.com](http://www.hsr-legal.com)

**Full Environmental Assessment Form  
Part 1 - Project and Setting**

**Instructions for Completing Part 1**

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe the work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Sponsor Information.**

|   |              |   |
|---|--------------|---|
| Name of Action or Project:<br>Huntley Power Plant Eminent Domain  |              |   |
| Project Location (describe, and attach a general location map):<br>3500 and 4293 River Road, Tonawanda, NY  |              |   |
| Brief Description of Proposed Action (include purpose or need):<br>The Town of Tonawanda is considering taking the above-referenced parcels for purposes of economic development purposes and to secure a critical source of industrial water supply for the Town. Since the decommissioning of the Huntley Power Plant the parcels have remained vacant and inactive and the source of water is at risk. |              |   |
| Name of Applicant/Sponsor:<br>Town of Tonawanda   |              | Telephone: (716) 877-8800                         |
|   |              | E-Mail:   |
| Address: 2919 Delaware Avenue   |              |   |
| City/PO: Tonawanda  | State: NY    | Zip Code: 14217                                   |
| Project Contact (if not same as sponsor, give name and title/role):<br>Shelly Hatter, Legal-Stereographer Town of Tonawanda Town Attorneys Office   |              | Telephone: (716) 875-9947                         |
|   |              | E-Mail: Hatter, Shelley <shatter@tonawanda.ny.us> |
| Address:<br>2919 Delaware Avenue  |              |   |
| City/PO:<br>Tonawanda   | State:<br>NY | Zip Code:<br>14217                                |
| Property Owner (if not same as sponsor):<br>Huntley Power LLC   |              | Telephone: 612-373-5300                           |
|   |              | E-Mail:   |
| Address:<br>1221 Nicolet Mall   |              |   |
| City/PO: Minneapolis  | State: MN    | Zip Code: 55403                                   |

**B. Government Approvals**

**B. Government Approvals, Funding, or Sponsorship.** ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

| Government Entity   | If Yes: Identify Agency and Approval(s) Required | Application Date (Actual or projected) |
|---|--|--|
| a. City Council, Town Board, or Village Board of Trustees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   | Town Board - Exercise of Eminent Domain Power    | January 2018                           |
| b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |  |
| c. City Council, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |  |  |
| d. Other local agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |  |
| e. County agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |  |  |
| f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |  |  |
| g. State agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |  |
| h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |  |
| <b>i. Coastal Resources.</b><br>i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>iii. Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |  |  |

**C. Planning and Zoning**

**C.1. Planning and zoning actions.**

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  Yes  No

- If Yes, complete sections C, F and G.
- If No, proceed to question C.2 and complete all remaining sections and questions in Part 1

**C.2. Adopted land use plans.**

a. Do any municipally-adopted (city, town, village or county) comprehensive land-use plan(s) include the site where the proposed action would be located?  Yes  No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  Yes  No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  Yes  No

If Yes, identify the plan(s):  
 Remediation Sites: 815025, Remediation Sites: 815044, Remediation Sites: 815016, NYS Heritage Areas, West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  Yes  No

If Yes, identify the plan(s):

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**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
 IF Yes, what is the zoning classification(s) including any applicable overlay district?  
 G1- General Industrial, RHC - Retail Highway Commerce

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No  
 IF Yes,  
 i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? Kenmore Town of Tonawanda Union Free School District

b. What police or other public protection forces serve the project site?  
Town of Tonawanda Police Department

c. Which fire protection and emergency medical services serve the project site?  
River Road Volunteer Fire Station and Sheridan Park Fire District

d. What parks serve the project site?  
Sheridan Park, Awtia Lane Park, Small Board Harbor

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Potential Residential, Commercial, recreational and industrial redevelopment

b. a. Total acreage of the site of the proposed action? 210 acres  
 b. Total acreage to be physically disturbed? 0 acres  
 c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? NA acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No  
 i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No  
 If Yes,  
 i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_  
 ii. Is a cluster/conservation layout proposed?  Yes  No  
 iii. Number of lots proposed? \_\_\_\_\_  
 iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will proposed action be constructed in multiple phases?  Yes  No  
 i. If No, anticipated period of construction: \_\_\_\_\_ months  
 ii. If Yes:  
 • Total number of phases anticipated \_\_\_\_\_  
 • Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year  
 • Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year  
 • Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_

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f. Does the project include new residential uses?  Yes  No  
 If Yes, show numbers of units proposed.

|                             | One Family | Two Family | Three Family | Multiple Family (four or more) |
|-----------------------------|------------|------------|--------------|--------------------------------|
| Initial Phase               | _____      | _____      | _____        | _____                          |
| At completion of all phases | _____      | _____      | _____        | _____                          |

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No  
 If Yes:

i. Total number of structures \_\_\_\_\_

ii. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; and \_\_\_\_\_ length

iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No  
 If Yes:

i. Purpose of the impoundment: \_\_\_\_\_

ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_

iii. If other than water, identify the type of impounded/contained liquids and their source: \_\_\_\_\_

iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres

v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  Yes  No  
 If Yes:

i. What is the purpose of the excavation or dredging? \_\_\_\_\_

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): \_\_\_\_\_
- Over what duration of time? \_\_\_\_\_

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_

iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
 If yes, describe. \_\_\_\_\_

v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres

vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres

vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet

viii. Will the excavation require blasting?  Yes  No

ix. Summarize site reclamation goals and plan: \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No  
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): Niagara River (837-1) - A-B Classification

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 609 494

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments?  Yes  No

If Yes, describe: \_\_\_\_\_

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No

If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water?  Yes  No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No

If Yes:

- Name of district or service area: \_\_\_\_\_
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), maximum pumping capacity: \_\_\_\_\_ gallons/minute:

d. Will the proposed action generate liquid wastes?  Yes  No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No

If Yes:

- Name of wastewater treatment plant to be used: \_\_\_\_\_
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

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Do existing sewer lines serve the project site?  Yes  No  
 Will line extension within an existing district be necessary to serve the project?  Yes  No  
 If Yes:  
 Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_

h. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No  
 If Yes:  
 Applicant/sponsor for new district: \_\_\_\_\_  
 Date application submitted or anticipated: \_\_\_\_\_  
 What is the receiving water for the wastewater discharge? \_\_\_\_\_

i. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans): \_\_\_\_\_

j. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_

k. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No  
 If Yes:  
 i. How much impervious surface will the project create in relation to total size of project parcel?  
 \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (impervious surface)  
 \_\_\_\_\_ Square feet or \_\_\_\_\_ acres (parcel size)  
 ii. Describe types of non-point sources: \_\_\_\_\_

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?  
 \_\_\_\_\_  
 If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_  
 Will stormwater runoff flow to adjacent properties?  Yes  No

l. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

m. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No  
 If Yes, identify:  
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles) \_\_\_\_\_  
 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers) \_\_\_\_\_  
 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation) \_\_\_\_\_

n. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No  
 If Yes:  
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No  
 ii. In addition to emissions as calculated in the application, the project will generate:  
 \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)  
 \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)  
 \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)  
 \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)  
 \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)  
 \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  Yes  No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

---

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

---

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

i. What is the peak traffic expected (Check all that apply).  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_

ii. For commercial activities only, projected number of semi-trailer truck trips/day: \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

---

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

---

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade to, an existing substation?  Yes  No

---

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: \_\_\_\_\_ N.A. \_\_\_\_\_
- Saturday: \_\_\_\_\_
- Sunday: \_\_\_\_\_
- Holidays: \_\_\_\_\_

ii. During Operations:

- Monday - Friday: \_\_\_\_\_ N.A. \_\_\_\_\_
- Saturday: \_\_\_\_\_
- Sunday: \_\_\_\_\_
- Holidays: \_\_\_\_\_

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?  Yes  No  
 If yes:  
 i. Provide details including sources, time of day and duration:  
 \_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen?  Yes  No  
 Describe: \_\_\_\_\_

n. Will the proposed action have outdoor lighting?  Yes  No  
 If yes:  
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:  
 \_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?  Yes  No  
 Describe: \_\_\_\_\_

o. Does the proposed action have the potential to produce odors for more than one hour per day?  Yes  No  
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:  
 \_\_\_\_\_

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?  Yes  No  
 If Yes:  
 i. Product(s) to be stored \_\_\_\_\_  
 ii. Volume(s) \_\_\_\_\_ per unit time \_\_\_\_\_ (e.g., month, year)  
 iii. Generally describe proposed storage facilities: \_\_\_\_\_

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?  Yes  No  
 If Yes:  
 i. Describe proposed treatment(s):  
 \_\_\_\_\_

ii. Will the proposed action use Integrated Pest Management Practices?  Yes  No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?  Yes  No  
 If Yes:  
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:  
 • Construction: \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
 • Operation: \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:  
 • Construction: \_\_\_\_\_  
 • Operation: \_\_\_\_\_

iii. Proposed disposal methods/facilities for solid waste generated on-site:  
 • Construction: \_\_\_\_\_  
 • Operation: \_\_\_\_\_

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5. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_

ii. Anticipated rate of disposal/processing:

- \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
- \_\_\_\_\_ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: \_\_\_\_\_ years

6. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_

ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_

iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)

Forest  Agriculture  Aquatic  Other (specify): \_\_\_\_\_

ii. If mix of uses, generally describe: \_\_\_\_\_

b. Land uses and covertypes on the project site.

| Land use or Covertype  | Current Acreage | Acreage After Project Completion | Change (Acres +/-) |
|--|-----------------|----------------------------------|--------------------|
| • Roads, buildings, and other paved or impervious surfaces                               |                 |                                  |                    |
| • Forested   |                 |                                  |                    |
| • Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural) |                 |                                  |                    |
| • Agricultural (includes active orchards, field, greenhouse etc.)                        |                 |                                  |                    |
| • Surface water features (lakes, ponds, streams, rivers, etc.)                           |                 |                                  |                    |
| • Wetlands (freshwater or tidal)   |                 |                                  |                    |
| • Non-vegetated (bare rock, earth or fill)   |                 |                                  |                    |
| • Other Describe: _____  |                 |                                  |                    |

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c. Is the project site presently used by members of the community for public recreation?  Yes  No  
 i. If Yes, explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No  
 If Yes,  
 i. Identify Facilities: \_\_\_\_\_

---

e. Does the project site contain an existing dam?  Yes  No  
 If Yes:  
 i. Dimensions of the dam and impoundment:  
 • Dam height: \_\_\_\_\_ feet  
 • Dam length: \_\_\_\_\_ feet  
 • Surface area: \_\_\_\_\_ acres  
 • Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
 ii. Dam's existing hazard classification: \_\_\_\_\_  
 iii. Provide date and summarize results of last inspection: \_\_\_\_\_

---

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No  
 If Yes:  
 i. Has the facility been formally closed?  Yes  No  
 • If yes, cite sources/documentation: \_\_\_\_\_  
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:  
 Project incorporates the parcel located at 4293 River Road which is used as a waste disposal site.  
 iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

---

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No  
 If Yes:  
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:  
 Unknown to the Project Sponsor. TBD.

---

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No  
 If Yes:  
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No  
 Yes - Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
 Yes - Environmental Site Remediation database Provide DEC ID number(s): 915025, 915044, 915018  
 Neither database  
 ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No  
 If yes, provide DEC ID number(s): 915003C, 915025, 915003, 915044, 915003B.  
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):  
 The Project Sponsor believes a portion of the parcel located at 3500 River Road has been entered into the NYSDEC Brownfield Cleanup Program.

1. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_

---

**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ No data available feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site: Urban Land \_\_\_\_\_ 100 %  
 \_\_\_\_\_ %  
 \_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ % of site  
 Moderately Well Drained: \_\_\_\_\_ % of site  
 Poorly Drained: 100 % of site

f. Approximate proportion of proposed action site with slopes:  0-10% \_\_\_\_\_ % of site  
 10-15%: \_\_\_\_\_ % of site  
 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_

---

**h. Surface water features.**

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No  
 If Yes to either i or ii, continue. If No, skip to E.2.f.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name Niagara River Classification \_\_\_\_\_
- Lakes or Ponds: Name 837-1 Classification A-S
- Wetlands: Name Federal Waters, Federal Waters, Federal Waters... Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

---

i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100 year Floodplain?  Yes  No

k. Is the project site in the 500 year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site:  
 Urban species, some deer, limited \_\_\_\_\_  
 Shorebirds (gulls, terns) \_\_\_\_\_  
 Fish (warmwater and coolwater species) \_\_\_\_\_

n. Does the project site contain a designated significant natural community?  Yes  No  
 If Yes:  
 i. Describe the habitat/community (composition, function, and basis for designation): \_\_\_\_\_  
 ii. Source(s) of description or evaluation: \_\_\_\_\_  
 iii. Extent of community/habitat:  
 • Currently: \_\_\_\_\_ acres  
 • Following completion of project as proposed: \_\_\_\_\_ acres  
 • Gain or loss (indicate + or -): \_\_\_\_\_ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species?  Yes  No  
 Bald Eagle

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern?  Yes  No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing?  Yes  No  
 If yes, give a brief description of how the proposed action may affect that use: \_\_\_\_\_  
 The Project will not impact the adjacent use of the Niagara River for fishing.

**E.3. Designated Public Resources On or Near Project Site**

a. Is the project site, or any portion of it, located in a designated agricultural district, certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No  
 If Yes, provide county plus district name/number: \_\_\_\_\_

b. Are agricultural lands consisting of highly productive soils present?  Yes  No  
 i. If Yes, acreage(s) on project site? \_\_\_\_\_  
 ii. Source(s) of soil rating(s): \_\_\_\_\_

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark?  Yes  No  
 If Yes:  
 i. Nature of the natural landmark:  Biological Community  Geological Feature  
 ii. Provide brief description of landmark, including values behind designation and approximate size/extent: \_\_\_\_\_

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area?  Yes  No  
 If Yes:  
 i. CEA name: \_\_\_\_\_  
 ii. Basis for designation: \_\_\_\_\_  
 iii. Designating agency and date: \_\_\_\_\_

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?  Yes  No

If Yes:

i. Nature of historic/archaeological resource:  Archaeological Site  Historic Building or District

ii. Name: \_\_\_\_\_

iii. Brief description of attributes on which listing is based: \_\_\_\_\_

---

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?  Yes  No

g. Have additional archaeological or historic site(s) or resources been identified on the project site?  Yes  No

If Yes:

i. Describe possible resource(s): \_\_\_\_\_

ii. Basis for identification: \_\_\_\_\_

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h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?  Yes  No

If Yes:

i. Identify resource: \_\_\_\_\_

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): \_\_\_\_\_

iii. Distance between project and resource: \_\_\_\_\_ miles.

---

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?  Yes  No

If Yes:

i. Identify the name of the river and its designation: \_\_\_\_\_

ii. Is the activity consistent with development restrictions contained in 6 NYCRR Part 666?  Yes  No

**F. Additional Information**

Attach any additional information which may be needed to clarify your project:

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Town of Tonawanda

Date December 8, 2018

Signature Mark A. Romanowski Esq., Agent for Town of Tonawanda

Title Outside Counsel for Town of Tonawanda

*M. A. Romanowski*

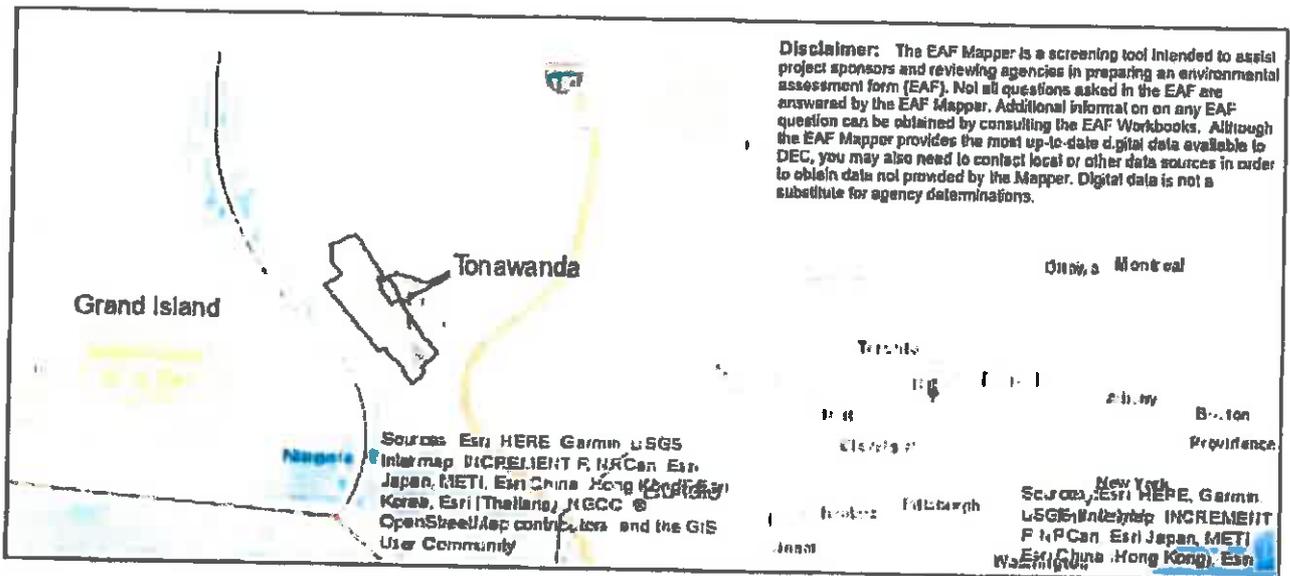
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DEC 8 2018

# EAF Mapper Summary Report

Monday, December 03, 2018 11:08 AM

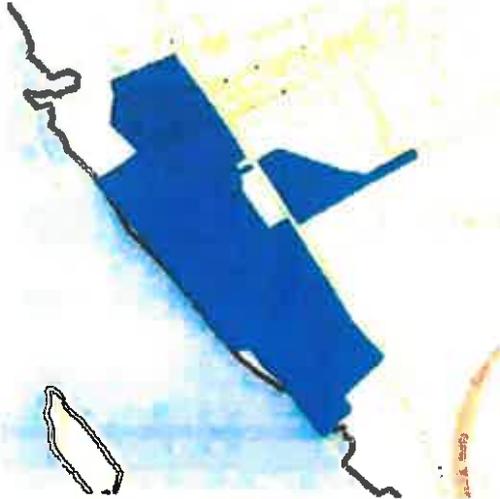


|   |   |
|---|---|
| B.1.i [Coastal or Waterfront Area]  | Yes   |
| B.1.ii [Local Waterfront Revitalization Area]                                       | Yes   |
| C.2.b. [Special Planning District]  | Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.                           |
| C.2.b. [Special Planning District - Name]   | Remediation Sites:915025 , Remediation Sites:915044 , Remediation Sites:915018 , NYS Heritage Areas:West Erie Canal Corridor      |
| E.1.h [DEC Spills or Remediation Site - Potential Contamination History]            | Yes - Digital mapping data for Spills Incidents are not available for this location. Refer to EAF Workbook.                       |
| E.1.h.i [DEC Spills or Remediation Site - Listed]                                   | Yes   |
| E.1.h.ii [DEC Spills or Remediation Site - Environmental Site Remediation Database] | Yes   |
| E.1.h.iii [DEC Spills or Remediation Site - DEC ID Number]                          | 915025 , 915044 , 915018  |
| E.1.h.iii [Within 2,000' of DEC Remediation Site]                                   | Yes   |
| E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]                          | 915003C , 915025 , 915003 , 915044 , 915003B , 915148 , 915018 , 915055   |
| E.2.g [Unique Geologic Features]  | No  |
| E.2.h.i [Surface Water Features]  | Yes   |
| E.2.h.ii [Surface Water Features]   | Yes   |
| E.2.h.iii [Surface Water Features]  | Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook. |
| E.2.h.iv [Surface Water Features - Lake/Pond Name]                                  | 837-1   |
| E.2.h.iv [Surface Water Features - Lake/Pond Classification]                        | A-S   |

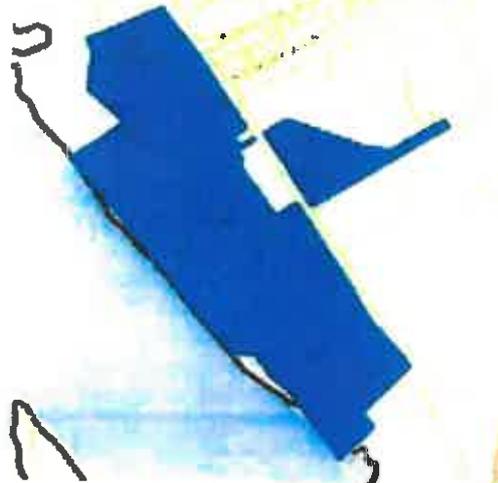
|   |  |
|---|--|
| E.2.h.iv [Surface Water Features - Wetlands Name] | Federal Waters   |
| E.2.h.v [Impaired Water Bodies]                   | No   |
| E.2.i. [Floodway]                                 | No   |
| E.2.j. [100 Year Floodplain]                      | Yes  |
| E.2.k. [500 Year Floodplain]                      | No   |
| E.2.l. [Aquifers]                                 | No   |
| E.2.n. [Natural Communities]                      | No   |
| E.2.o. [Endangered or Threatened Species]         | Yes  |
| E.2.o. [Endangered or Threatened Species - Name]  | Bald Eagle   |
| E.2.p. [Rare Plants or Animals]                   | No   |
| E.3.a. [Agricultural District]                    | No   |
| E.3.c. [National Natural Landmark]                | No   |
| E.3.d [Critical Environmental Area]               | No   |
| E.3.e. [National Register of Historic Places]     | Digital mapping data are not available or are incomplete. Refer to EAF Workbook. |
| E.3.f. [Archeological Sites]                      | Yes  |
| E.3.i. [Designated River Corridor]                | No   |

Erie County On-Line Mapping System  
Parcel Detail Report

Report generated:  
12/3/2018 11:03:41 AM



Parcel Overview Map



Parcel Detail Map

**PIN:** 1464890641600001001200

**SBL:** 64.16-1-1.2

**Address:** 3500 RIVER RD

**Owner 1:** HUNTLEY POWER LLC

**Owner 2:** C/O NRG ENERGY TAX DEPT

**Mailing Address:** 211 CARNEGIE CTR

**City/Zip:** PRINCETON NJ 08540

**Municipality:** Tonawanda

**Property Class:** 875

**Class Description:** C - Elec-fossil

**Front:** 0

**Depth:** 0

**Deed Roll:** 1

**Deed Book:** 10955

**Deed Page:** 9605

**Deed Date:**

**Acreage:** 93.57864826033

**Total Assessment:** \$2,730,000

**Land Assessment:** \$1,000,000

**County Taxes:** \$2,730,000

**Town Taxes:** \$0

**School Taxes:** \$0

**Village Taxes:** \$0

**School District:** KENMORE-TONAWANDA UNION FREE SCHOOL

**Year Built:** 0

**Sqft Living Area:** 0

**Condition:** 0

**Heating:** 0

**Basement:** 0

**Fireplace:** 0

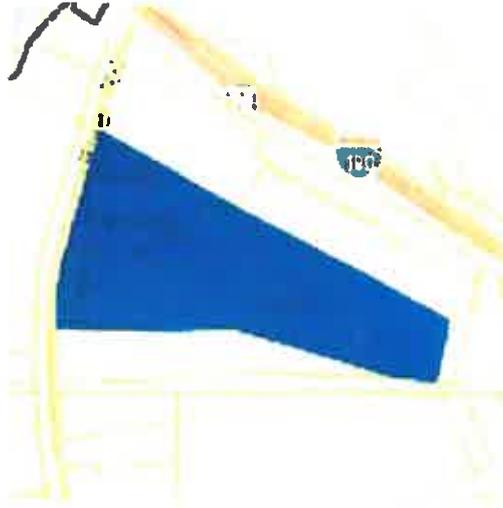
**Beds:** 0

**Baths:** 0

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Erie County On-Line Mapping System  
Parcel Detail Report

Report generated:  
12/3/2018 11:06:03 AM



Parcel Overview Map



Parcel Detail Map

**PIN:** 1464890512000001001200

**SBL:** 51.20-1-1.2

**Address:** 4293 RIVER RD

**Owner 1:** HUNTLEY POWER LLC

**Owner 2:** C/O NRG ENERGY INC TAX DEPT

**Mailing Address:** 211 CARNEGIE CTR

**City/Zip:** PRINCETON NJ 08540

**Municipality:** Tonawanda

**Property Class:** 852

**Class Description:** C - Landfill

**Front:** 0

**Depth:** 0

**Deed Roll:** 1

**Deed Book:** 10959

**Deed Page:** 4814

**Deed Date:**

**Acreage:** 116.72647901107

**Total Assessment:** \$195,000

**Land Assessment:** \$195,000

**County Taxes:** \$195,000

**Town Taxes:** \$0

**School Taxes:** \$0

**Village Taxes:** \$0

**School District:** KENMORE-TONAWANDA UNION FREE SCHOOL

**Year Built:** 0

**Sqft Living Area:** 0

**Condition:** 0

**Heating:** 0

**Basement:** 0

**Fireplace:** 0

**Beds:** 0

**Baths:** 0

DEC 4 - 2019

**Town of Tonawanda**

**Huntley Eminent Domain Potentially Involved and Interested Parties**

**Potentially Involved Parties**

**Town of Tonawanda Planning Board  
2919 Delaware Avenue, Room 21  
Kenimore, New York 14217**

**New York State Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203**

**New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, New York 12223**

**Empire State Development Corporation  
95 Perry Street, Suite 500  
Buffalo, New York 14203**

**Potentially Interested Parties**

**New York State Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231**

**Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207**

**Erie County Department of Environment and Planning  
95 Franklin Street #1000  
Buffalo, New York 14202**

**STATE ENVIRONMENTAL QUALITY REVIEW ACT  
("SEQRA")**

**NOTICE OF INTENT  
ESTABLISHMENT OF SEQRA LEAD AGENCY  
TONAWANDA TOWN BOARD**

**TO:** Involved and Interested Agencies

**DATED:** November 19, 2018

**THIS NOTICE** is issued pursuant to Part 617.6(b) of the implementing regulations pertaining to Article 8 of the New York State Environmental Conservation Law ("ECL"), also known as the State Environmental Quality Review Act ("SEQRA").

**PLEASE TAKE NOTICE** that the Tonawanda Town Board has determined that it is willing to act as SEQRA Lead Agency for environmental review of the proposed action described below and shall coordinate environmental review pursuant to Article 8 of the ECL and Implementing Regulations (6 NYCRR Part 617).

**Name of Action:** Huntley Power Plant

**SEQRA Status:** Unlisted Action

**Description of Action:** Town of Tonawanda, New York (the "Applicants") are proposing to acquire the real property interests of the former Huntley Power Plant located at 3500 River Road, Tonawanda, New York and the related property located at 4293 River Road, Tonawanda, New York (the "Site") for the purposes of redevelopment to avoid blight and to provide continued access to a critical raw water supply for the Town of Tonawanda (the "Project").

**Location:** The Site is located in the Town of Tonawanda, County of Erie, State of New York, located at 3500 River Road, Tonawanda, New York (tax parcel ID# 64.16-1-1.2) and 4293 River Road, Tonawanda, New York (tax parcel ID# 51.20-1-1.2).

**Contact Person:** Mario A. Giacobbe, Esq.  
Michael H. Kooshoian, Esq.  
Town of Tonawanda Attorney's Office  
2919 Delaware Avenue, Room 2  
Tonawanda, New York 14217  
(716)875-9947

**PLEASE TAKE FURTHER NOTICE** that unless any involved agency objects to this determination and Intent of Lead Agency status within thirty (30) calendar days, the Town of Tonawanda Planning Board shall be deemed Lead Agency.

**Dated:** Buffalo, New York  
November 19, 2018

# **EXHIBIT 9**

**NYSDEC February 11, 2019  
Response Letter**

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9  
270 Michigan Avenue, Buffalo, NY 14203-2915  
P: (716) 851-7165 | F: (716) 851-7168  
[www.dec.ny.gov](http://www.dec.ny.gov)

February 11, 2019

Marc A. Romanowski, Esq.  
Hopkins, Sorgi & Romanowski PLLC  
26 Mississippi Street, Suite 400  
Buffalo, New York 14203

Dear Mr. Romanowski:

### SEQR Coordination - Proposed Huntley Power Plant Eminent Domain Town of Tonawanda, Erie County

The Department has received the December 3, 2018 State Environmental Quality Review Act (SEQR) coordination letter and associated full environmental assessment form for the Town of Tonawanda's proposed exercise of eminent domain over the parcels located at 3500 River Road and 4293 River Road. The Department concurs that the Town of Tonawanda act as SEQR Lead Agency for the environmental review of this action.

Thank you for providing the Department with additional time to respond to your coordination letter and for clarifying that the scope of the project will include all components of both parcels. Please be advised that the Department does not have a role in the Town's eminent domain proceeding, but may have a role in future actions at the site. The following items may be relevant to any future action:

1. New York State Environmental Conservation Law ("ECL") § 15-1501 and the associated regulations (6 NYCRR Part 601) require water withdrawal permits for all water withdrawal systems with the capacity to withdraw 100,000 gallons per day (gpd) or more from the waters of the state. The Department's water withdrawal permitting regulations may be viewed at <http://www.dec.ny.gov/regs/4445.html>. See Section 601.10 for application requirements, and the website for forms and additional guidance: <http://www.dec.ny.gov/lands/94327.htm#Forms> and.
2. Water withdrawals are subject to 6 NYCRR §704.5 and Commissioner's Policy CP-52 and must reflect the best technology available for minimizing adverse environmental impact, such as impingement and entrainment of aquatic organisms. The cooling water requirements listed in 704.5 and CP-52 would be contained in the raw water users' State Pollutant Discharge Elimination System (SPDES) permits. SPDES permittees are responsible for ensuring their use of a cooling water intake structure is compliant with 704.5, CP-52, and Section 316(b) of the Clean Water Act.
3. Please note that the Niagara River has a water classification and standard of A-Special. The physical disturbance of the bed or banks of the river would require an Article 15, Title 5, Protection of Waters Permit from this Department.



Marc A. Romanowski, Esq.  
February 11, 2019  
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4. Huntley Power LLC has filed a Brownfield Cleanup Program application for the remediation of a portion of the parcel at 3500 River Road, referred to as site number C915337. Please be advised that certain investigation and remediation will remain an outstanding obligation should the remediation not proceed under that program. For information on this program, please contact Mr. Chad Staniszewski at 716-851-7220.
5. Huntley Power LLC also has certain responsibilities under its SPDES permit resulting from the closure of its plant. Such actions include, but are not limited to, the consolidation of certain outfalls; maintaining certain equipment for third party contracts related to the withdrawal of water from the site; remediation of the coal yard and equalization basins; and operation of the wastewater treatment plant for pumping of the coal pile run-off water.
6. Huntley Power LLC is required to remediate the South Settling Pond pursuant to the federal requirements set forth under the Hazardous and Solid Waste Management System, Disposal of Coal Combustion Residuals from Electric Utilities, 40 CFR Parts 257 and 261.

Without knowing the specifics of the Town of Tonawanda's proposed eminent domain action, it is not clear how that action will impact the issues referenced in paragraphs 4-6 above.

Thank you for providing this office the opportunity to review this proposal. Department staff are available to discuss the above should you or your client have any questions. . Please feel free to contact me at 716/851-7165.

Respectfully,



David S. Denk  
Regional Permit Administrator

DSD

ecc: Terri Mucha, Esq., NYSDEC OGC  
Mr. Chris LaLone, Regional Engineer, NYSDEC

# **EXHIBIT 10**

**8 x 10 photos (6) of Huntley Station**







