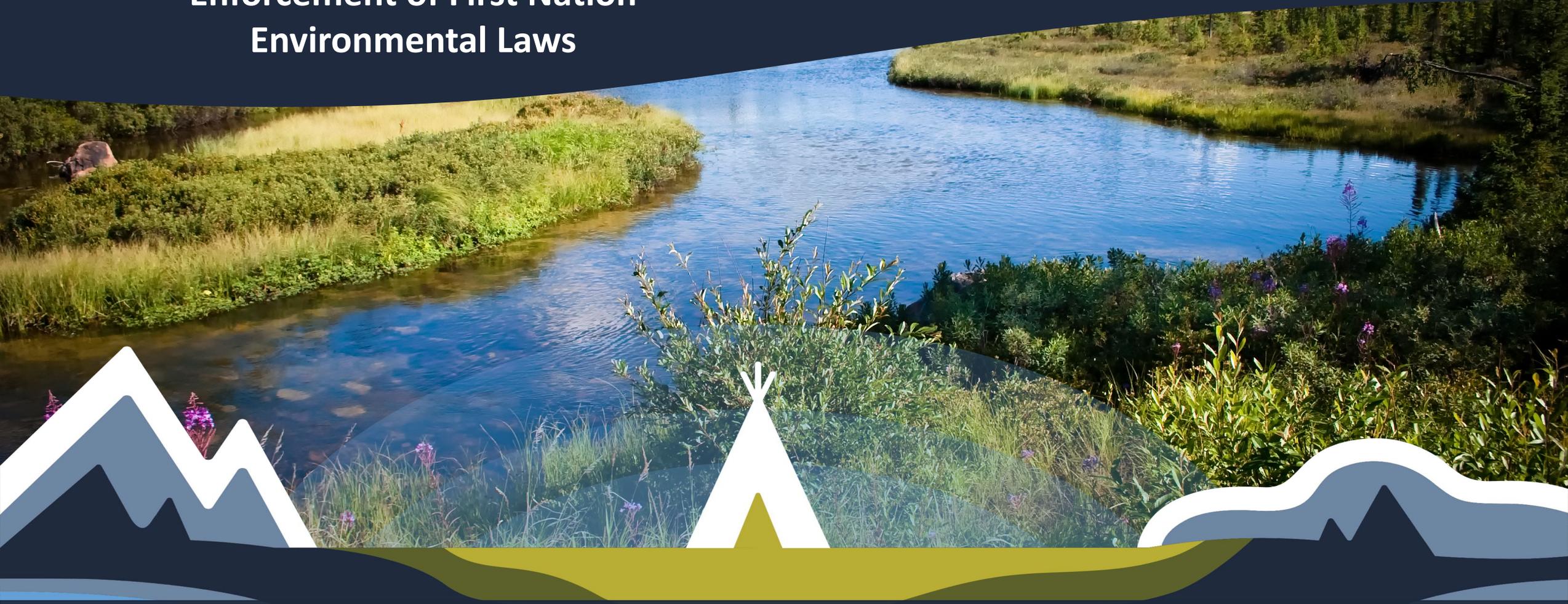




National Law Enforcement Workshop 2020

Enforcement of First Nation Environmental Laws



Enforcement of First Nation Environmental Laws

Objectives

- ❖ Environmental Governance
- ❖ Challenges in the Enforcement of First Nation Environmental Laws
- ❖ Designing an Enforcement Program
- ❖ Barriers to Compliance
- ❖ Enforcement Measures
- ❖ Enforcement Processes



Environmental Governance

- Under the Framework Agreement, First Nations have the recognized authority over the management of their lands and environment
- Environmental management is integral to land protection & good governance
- Compliance with and enforcement of environmental law are critical to the health of the community



Challenges in the Enforcement of First Nation Environmental Laws



Jurisdictional Issues



Need for Trained/ Qualified staff



Limited Resources



Public Awareness & Education



Underdeveloped Regulatory Design



Enforceability of Sanctions



Transboundary Environmental Problems



High cost of equipment and tests for pollutants



Lack of Inspections & Monitoring



Inadequate penalties = ineffective deterrence

Designing an Enforcement Program: Goals

Goals:

- ❖ Improving implementation of environmental legislation;
- ❖ Addresses barriers to environmental compliance;
- ❖ Developing effective enforcement networks;
- ❖ Promoting traditional approaches to obtain compliance;
- ❖ Create efficiencies in the development of tools and programs;
- ❖ Foster the political will needed to strengthen implementation of environmental standards;

Values for Success:

- ❖ Consistent & Fair
- ❖ Independence from political interference
- ❖ Transparency
- ❖ Stability and Continuity

Powers Necessary to Ensure Program Effectiveness

Some of the powers necessary to ensure program effectiveness are the abilities to:

- ❖ Issue regulations, permits, licenses and guidance to implement the law,
- ❖ Monitor regulated actors and gain access to their records and equipment to determine if they are in compliance,
- ❖ Require the regulated community to monitor its own compliance, keep records,
- ❖ Take legal action against non-compliant actors, including: (1) imposing a range of monetary penalties and other sanctions on actors who violate the law; or (2) imposing criminal sanctions on actors who violate the law (e.g. an individual or corporation that deliberately falsifies data),
- ❖ Correct situations that pose an imminent and substantial threat to public health or the environment.

Designing an Enforcement Program: Strategies

Clearly identify the regulated community and establish priorities for enforcement

To whom does the law apply?
Meaningful targets, realistic and measurable goals that are consistent with the First Nation's values.

Clarifies Roles & Responsibilities

Who will be responsible for enforcing your law and how are they appointed?
What enforcement powers will they have?

Have clear, enforceable requirements

Unclear, imprecise, ambiguous, inconsistent or contradictory requirements may be difficult or impossible to enforce.

Monitor compliance accurately and reliably

Is the compliance checking effort expected by your law realistically feasible?

Maintain high rates of compliance

Respond to violations in a timely and appropriate way

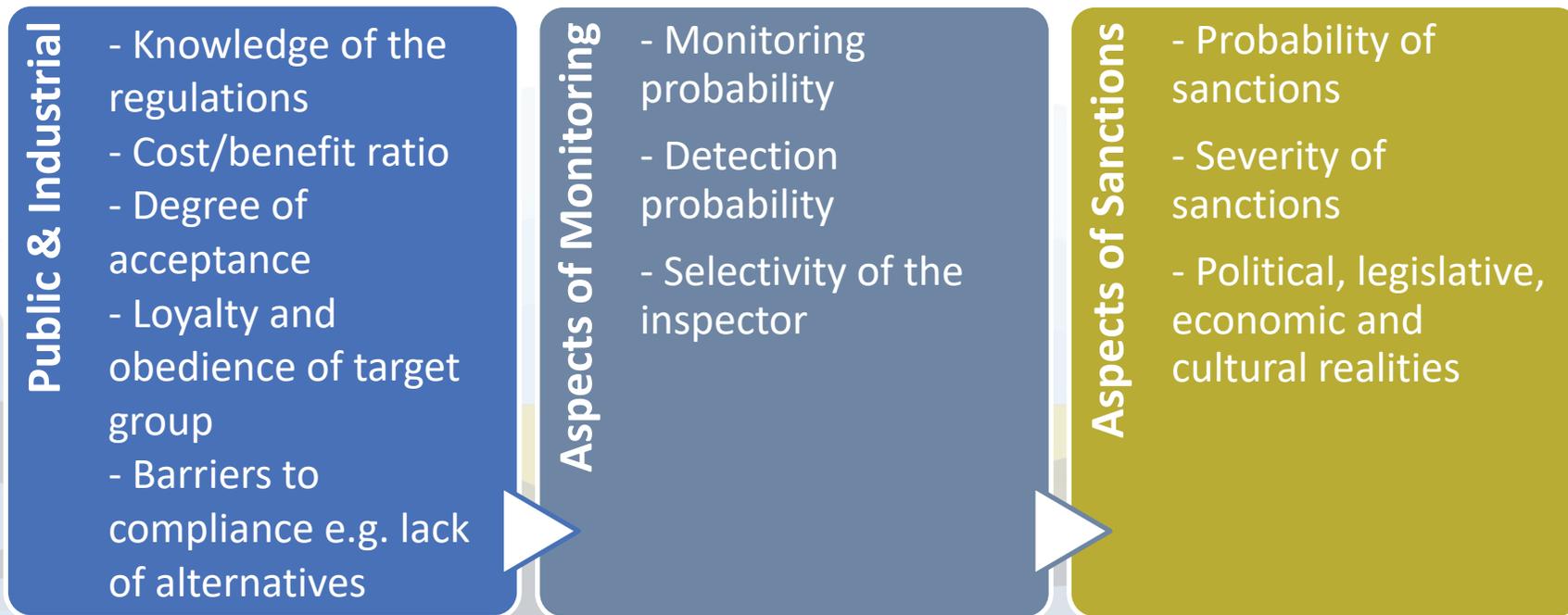
Use penalties and sanctions appropriately to create deterrence

Maintain accurate records and provide accurate reports

Understanding Non-Compliance

- A number of factors can drive non-compliance
- Understanding these factors will help program planners predict the likelihood of success of new mandatory programs and decide where to target enforcement and compliance resources

Reasons for non-compliance:



Approaches to Compliance

Voluntary

- Public education
- Technical assistance
- Promotion
- Ex. International Standards Organization's (ISO) 1400 certification

Market-Based

- Fee systems
- Emissions Trading systems
- Offsets
- Auctions
- Labelling/ Disclosure

Mandatory

- Prohibitions/ Bans
- Permitting or licensing
- Obligation to monitor and report
- Requiring an entity to clean up or repair environmental damage

Types of Mandatory Requirements



Developing a Committee

- ❖ Highly recommended that a committee be established for this task
- ❖ Participatory approach
- ❖ Membership could include:
 - ❖ Personnel from Chief and Council (e.g. Lands & Environment portfolio holder)
 - ❖ Land & Environment Committee
 - ❖ Internal experts – Land Manager, Environmental Coordinator
 - ❖ External experts – LABRC, Regional Technical Services (OFNTSC, TSAG), Consultant (if necessary), with the technical, social, economic and institutional backgrounds to cover the more specialized technical, financial and institutional questions
 - ❖ Interested members
 - ❖ Local citizen organizations (Zero waste groups, Earth Care, Green team etc.)
 - ❖ Local businesses

Identify Issues, Formulate Objectives & then Develop Laws



Types of Enforcement Mechanisms: Informal



Telephone Call



Inspection



Warning Letters



Notice of Violation

- The goals of informal action is to bring the violator into compliance
- Co-operative method
- Do not penalize and cannot be enforced but can lead to more severe response of they are ignored

Types of Enforcement Mechanisms: Formal

- Backed by the force of law
- Can be Civil or Criminal
- Formal charges bringing offenders before the provincial courts may be required in other situations.
- Accompanied by procedural requirements to protect the rights of the individual

Monetary penalties

Denial of Services

Denial or Revocation of Permits or Licenses

Shutdown of Operations

Forced shifts to new technologies and processes

Prison Sentences

Denial of funding

Negative publicity

Compensation for Damages

Escalation of Sanctions

Types of Enforcement Mechanisms: Alternative Measures & Settlements

Traditional Remedies
& Alternative Justice

Pollution Prevention

Pollution reductions
beyond the level
required for
compliance

Environmental
auditing

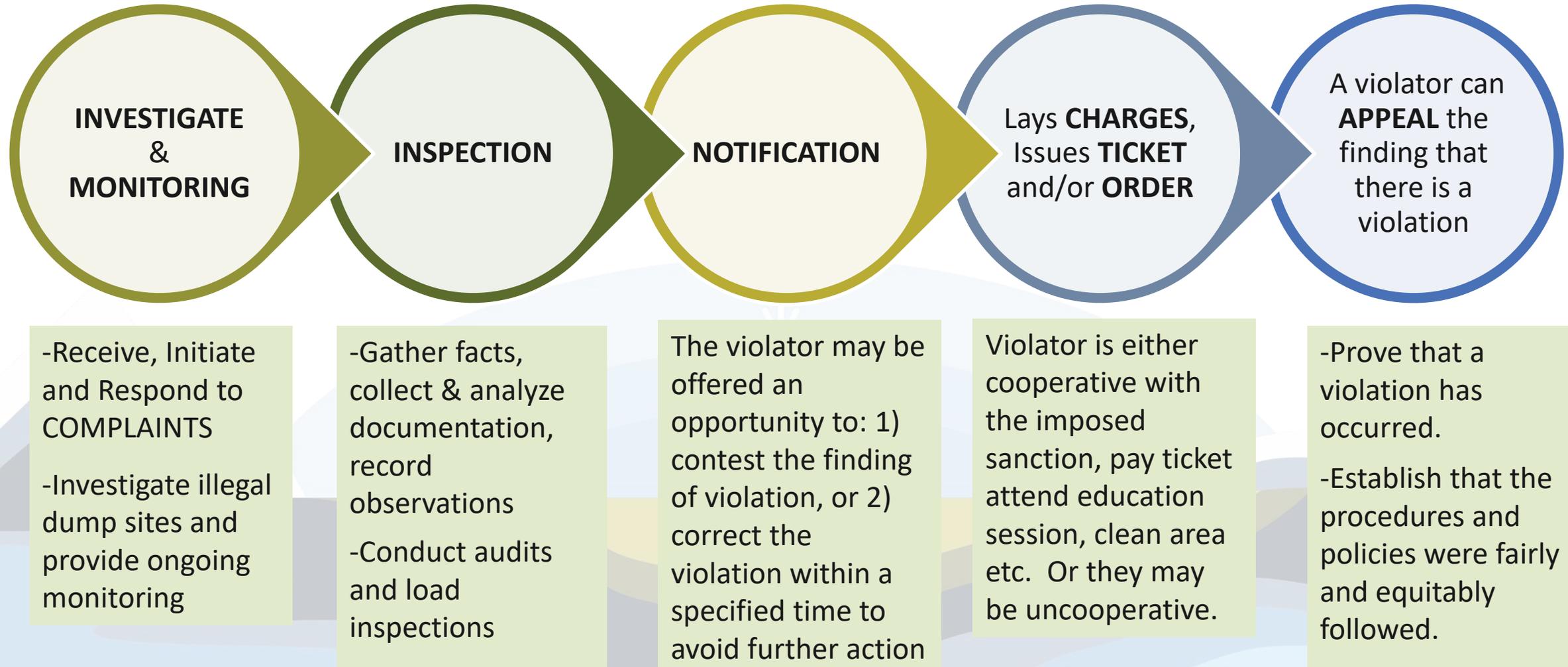
Environmental
restoration

Publicity

Training

Alternatives for
sources unable to pay
penalties

Formal Enforcement Processes



Promoting Compliance and Respect for Laws

Community Involvement and Enforcement

- Involve the community early in development of your laws
- Educating the community on an environmental law and its importance can also help to ensure compliance.
- Voluntary compliance with a law reduces the need for enforcement measures including fines, charges, and use of the court system.
- Elders, Mediation & Dispute Resolution - have been found to be more effective than typical court punishments as they help to resolve the issue and educate offenders

Early Engagement

Education

Traditional Remedies

Alternative Measures

Case Study: Behaviour Management System

Behaviour Management System – MFN education sessions on proper waste disposal and effects on lands and waters

- Unauthorized disposal of waste by non-band member – attend a half day session on treaty rights, shared responsibilities to all creation
- Place or mix dangerous material with waste – education session on damages to the lands, human health on dangerous materials
- 2nd offence – Community service at the MFN Waste Management Depot
- 3rd suspended or prohibited by BCR or court order from using the MFN Waste Management Depot

Solid Waste Support



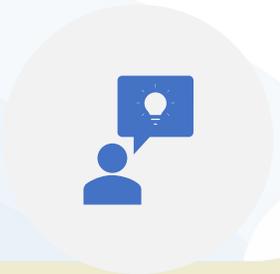
WORKSHOPS



ONLINE COURSES



FUNDING PROGRAM



KNOWLEDGE REPOSITORY



DIRECT COMMUNITY SUPPORT



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THANK YOU!

For more information, please visit:

www.labrc.com

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