



Enforcement Considerations for Developing Environmental Laws

*Environmental Assessment, Protection and Solid Waste Management
Laws*

Enforcement and Law Making Workshop – Eastern Region

December 5, 2018



Enforcement Considerations for Developing Environmental Laws

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Environmental Governance

- Environmental governance means the actions and tools used to exercise control over First Nations Lands, waters, and biota.
- Environmental governance is grounded in the *Framework Agreement*. It empowers First Nations to manage lands and resources, make laws, administer laws, and enforce laws.
- The environmental issues faced by a First Nation and the capacity to deliver environmental governance functions will be unique to each First Nation.
- Therefore, environmental governance and management regimes need to be tailored to suit the First Nation's particular circumstances and capacities.
- Planning as an important initial step in the environmental governance/Environmental Protection Regime that is enabled by the *Framework Agreement*.



Environmental Governance

Environmental Management Plans (EMPs)

An EMP:

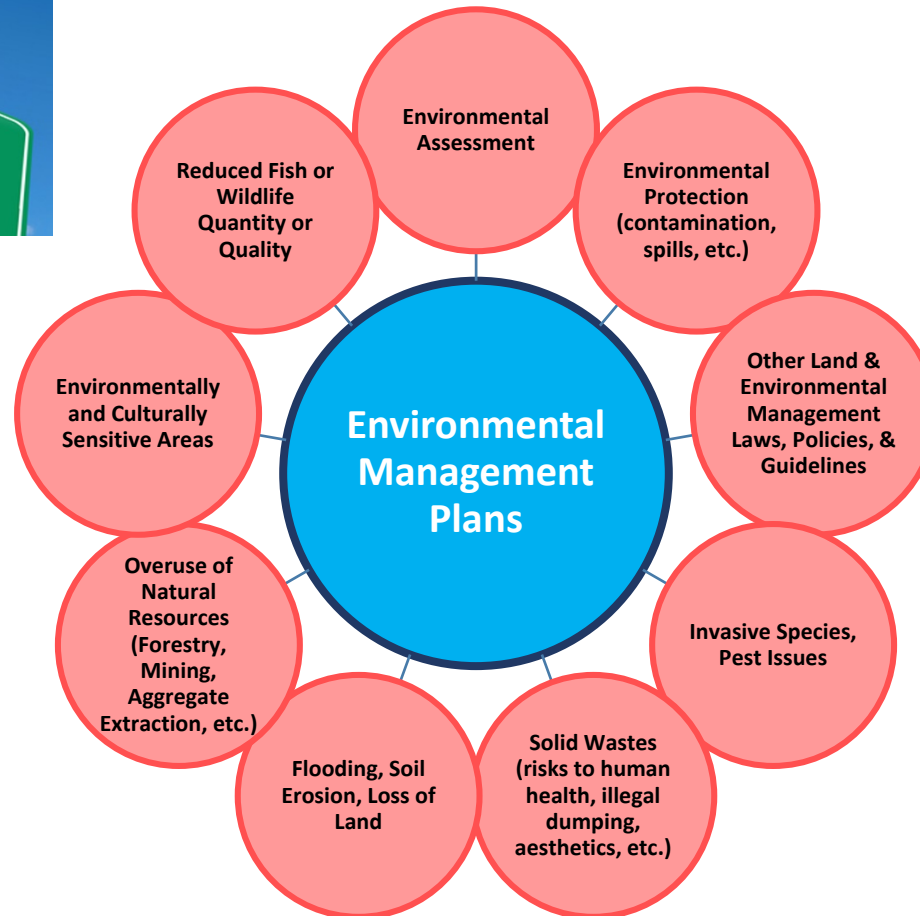
- defines a First Nation's approach to environmental governance.
- is a good tool for identifying environmental issues on a First Nation's land, and proposing responses to resolve those issues.
- is not legally required.
- is useful in determining how a First Nation will meet their legal obligations, limit liability, and renew their role as protectors of the land.
- can outline the laws, policies, and procedures a First Nation wants to pass, and help set a timeline and workplan for their development.
- can also be used to communicate the First Nation's environmental priorities and directions to staff, community members, other governments, businesses and institutions.



Environmental Governance

Environmental Management Plans (EMPs)

Examples of environmental issues that could be included in an EMP*

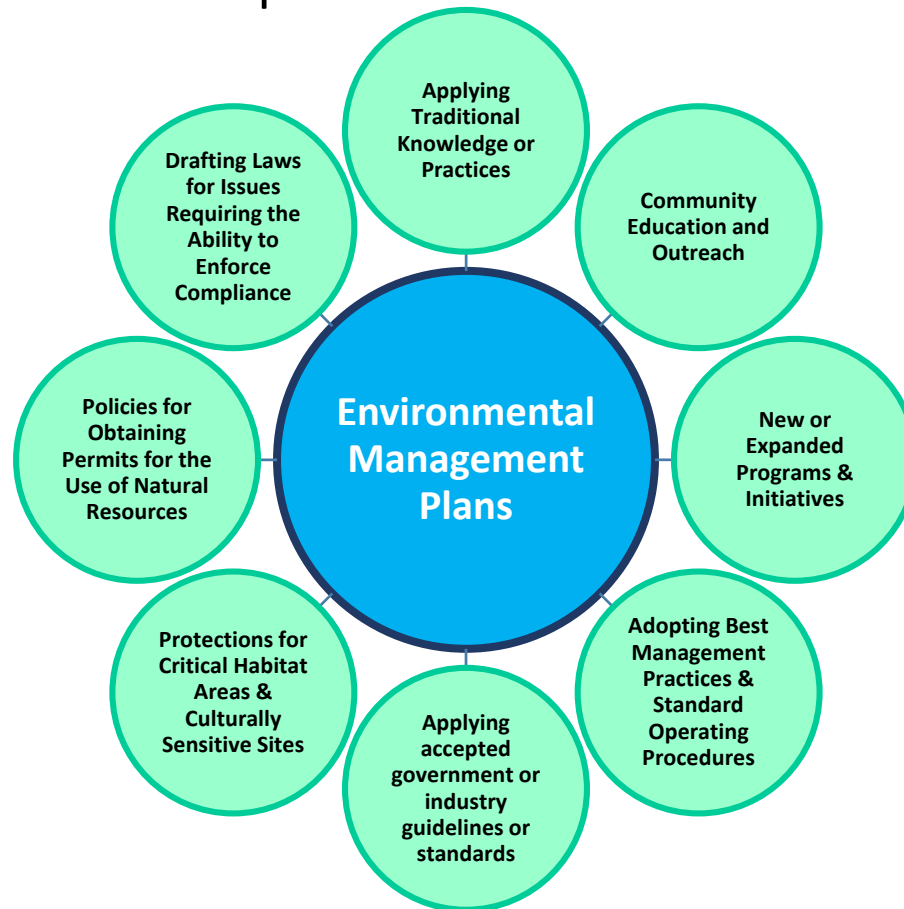


*Issues included in your EMP will be specific to your First Nation, and should be developed with extensive community consultation

Environmental Governance

Environmental Management Plans (EMPs)

Examples of potential responses to environmental issues identified in an EMP*



*responses selected by a First Nation will depend on the nature of the environmental issues, environmental or human health risks, willingness of community members to accept proposed responses, and capacity of the First Nation to take selected actions.

Environmental Governance

Technical Specialists



- Environmental governance and management regimes involve complex technical issues and scientific procedures associated with assessing presence, concentrations, and risks posed by chemical contaminants in soil, water, or air (e.g., soil or water sampling, laboratory analysis, interpretation of results, developing remedial plans).
- **Appropriately trained specialists** are likely to be required for environmental governance procedures on reserves.
- It is recommended that a First Nation determine the level of environmental services that can be delivered by First Nation staff and identify private firms, government agencies and companies that can provide additional assistance in support of the First Nation's environmental governance and management regime.
- A combination of in-house and retained services may be a sensible approach for most First Nations.



Environmental Governance

Technical Specialists: Consultant or Staff Credentials for Specific Environmental Activities

*Note: This is not an exhaustive list. There are other credentials, certifications, degrees, etc. that are not listed here. Some credentials apply only in individual provinces, such as British Columbia's Qualified Environmental Professional.

Certifications should be considered one of the criteria for retaining services of an individual or firm. Some highly competent people have not obtained professional or technical accreditation. Other important factors in selecting staff or consultants include years of experience, familiarity with local conditions, training and education, and understanding of specific issues facing the First Nation.

Technical diplomas or certificates, or university degrees also indicate the graduates' training, education, research, and competence in specific fields of expertise. Degree and diploma programs vary widely across Canada and are subject to frequent changes, so they are not included in the foregoing table.

Topic	Fields of knowledge or training	Professional credentials*
Environmental planning	Planning, various environmental sciences, data collection and report preparation, First Nation land management	Registered Professional Planner (RPP); Member, Canadian Institute of Planners (MCIP), Environmental Professional (EP) in relevant field
Species at risk, habitat	Biology, ecology, zoology, botany, ichthyology, related environmental sciences	Registered Professional Biologist (R.P.Bio.), Professional Biologist (P.Biol.), or related; Certified Wildlife Biologist; Associate Wildlife Biologist
Contamination and remediation	Chemistry, risk management, engineering and geoscience, soil science, toxicology	Member of Contaminated Sites Approved Professionals (CASAP) Society; Professional Engineer (P.Eng.); Environmental Professional (EP) in relevant field, Certificate of Designation (under CEPA), EP in relevant field
Water quality or management	Hydrology, civil engineering, public health, biology, chemistry, hydrogeology	Member, Canadian Water Quality Association; member, Canadian Association on Water Quality (CAWQ, ACQE); P.Eng. (civil), R.P.Bio., Certified Erosion Sediment Storm Water Inspector (CESSWI), Professional Geoscientist (P. Geo.)
Wastewater	Sewer system and wastewater management, wastewater treatment, hydrology, hydrogeology, chemistry, civil engineering, public health	Wastewater management certificate holder (provincial); P.Eng. (civil)
Soils, agriculture	Soil science, agronomy, agriculture, crop science	Professional Agronomist (P. Ag.), Certified Agricultural Consultant (CAC); Certified Agricultural Advisor (CAA); Certified Crop Advisor (CCA); Certified Professional in Erosion and Sediment Control (CPESC)
Slope stability, erosion control	Geology, geomorphology, soil science	P.Geo., P.Eng., CPESC, Certified Professional Soil Scientist (CPSS)
Trees in communities	Arboriculture, biology, botany	International Society of Arboriculture Certified Arborist (ISA Certified); Tree Risk Assessor Qualification (TRAQ); R.P.Bio., P.Ag.
Forestry	Forestry, biology, botany	Registered Professional Forester (RPF), ingénieur forestier (ing.f.); R.P.Bio.
Fish, fish habitat	Biology, ichthyology, stream ecology, wetland evaluation, environmental science	Certified Fisheries Professional (CFP); Associate Fisheries Professional (AFP); R.P.Bio.; EP in fisheries, Qualified Environmental Professional certification (British Columbia only)
Land use, community design	Planning, urban design, architecture, landscape architecture, First Nation land management	RPP, MCIP, licensed under a provincial architectural licensing authority; member of provincial landscape architecture organization; LEED Accredited Professional (AP);
Community involvement	Planning, sociology, communications	International Association for Public Participation (IAP2); RPP; MCIP; Certificate in Communications (various institutions)
Mapping	Cartography, computer mapping, geography, geographic information systems (GIS)	Canadian Institute of Geomatics (CIG) Certification; ESRI Certification; Geographic Information System Certification (GISC); Information Mapping Certification; GPS and GIS Certification; Degree in relevant field

Environmental Laws

Framework Agreement and Environmental Laws

- Section 23 of the *Framework Agreement*:

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

- First Nation environmental laws must “meet or beat” the current federal standards, and in some circumstances, provincial laws.
- A First Nation may make their own environmental laws (e.g. Environmental Assessment, Contaminated Sites Laws) after a Land Code is adopted, as long as the First Nation meets the requirements stipulated in the *Framework Agreement*.



Environmental Laws

Framework Agreement and Enforcement of Environmental Laws

- Section 19.1 of the *Framework Agreement*:

To enforce its land code and its First Nation laws, a First Nation will have the power to

(a) establish offences that are punishable on summary conviction;

(b) provide for fines, imprisonment, restitution, community service, and alternate means for achieving compliance; and

(c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

- A First Nation should remember that merely having a law does not guarantee compliance. Inspection, enforcement and adjudication must accompany the adoption of laws.



Environmental Laws

Environmental Laws created under a First Nation's environmental governance and management regime provide a legal basis and framework for enforcement or measures to protect First Nation land, water and air from contamination including:

- Providing a proper **records management system** (e.g., financial records, permits, authorizations, ongoing investigations, adjudication matters, etc.)
- Identifying **roles and responsibilities** for the administration, inspection, enforcement and adjudication of the environmental law
- Outlining **investigative authorities** (e.g., search and seizure, document inspection, certification)
- Identifying the **court or tribunal of competent jurisdiction** for prosecution of offences
- Methods of **ensuring compliance** with the environmental law or court orders to rectify problems and impose penalties
- Issuing oral and written **warnings**
- Issuing cease work **orders**
- Establishing the nature and amount of **penalties for non-compliance** with the environmental law or obstruction of an investigation, inspection or court order
- Issuing and collecting fines and imposing other **penalties and remedies**



Environmental Assessment Laws

Environmental Assessment (EA):

- examine and identify the environmental, social, economic, and cultural effects of proposed developments before they occur and recommend mitigation measures to avoid or reduce those effects.
- provide an opportunity to improve developments by avoiding or reducing identified impacts and cumulative effects, and engage the community about the environmental implications of projects.



Framework Agreement Requirements for EA:

- Section 25.3:

The First Nation's environmental assessment process will be consistent with requirements of the Canadian Environmental Assessment Act.

- Section 25.4:

The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.



Environmental Assessment Laws

General Provisions to consider including in an EA Law:

- It is recommended that a First Nation's EA law start with a general provision requiring all projects occurring on First Nations land undergo an EA in accordance with Section 25.4 of the *Framework Agreement*
 - First Nations may wish to include provisions to exempt certain types of routine projects that they have already determined are not likely to result in adverse environmental effects and any projects that are required under emergency circumstances (i.e. immediate threat to human health or the environment)
- Also recommend including general provisions to outline:
 - how an EA is conducted (general process, responsibilities, community consultation, timelines)
 - what is looked at in an EA (factors to be considered – i.e., environmental, cultural & socio-economic effects of the project)
 - who makes the decision on the significance of environmental effects (to ensure consistency and transparency in decision-making, especially important for First Nation-lead projects)
 - details for harmonizing EA processes between the First Nation, Canada, and the province
 - offences
 - powers and duties for enforcement
 - penalties for offences and contravention



Environmental Assessment Laws

Offences to Consider Including in an EA Law:

- Recommend including a general offence provision stating that it is an offence to conduct works on First Nations land without first determining that:
 - no EA is required,
 - the EA has resulted in a decision that the proposed works will not likely result in significant adverse environmental effects, or
 - that the significant adverse environmental effects are justified under the circumstances (OPTIONAL).
- Other offence provisions to consider including:
 - Failure to conduct works in accordance with the project plans that were provided for review under the EA process.
 - Failure to implement any of the mitigation measures that were taken into account in the decision-making process.
 - Failure to follow any of the conditions of the EA approval.
 - Providing false information.
 - Failure to follow an order (i.e.: stop work order).
 - Interfering with an enforcement officer performing his or her duties under the EA law.



Environmental Protection Laws

Environmental Protection (EP):

- is defined as the efforts made to identify, remediate and prevent contamination of soil, water and air, and to reduce associated risks to environmental and human health and safety.
 - The adverse effects of exposure to contaminants may result from direct or indirect contamination of soils, water, and air from hazardous materials and uncontrolled exposure to those contaminants.



EP Issues on Reserves:

- Hazardous substances (contaminated sites, spills)
- Solid wastes
- Fuel storage tank management
- Sewage treatment
- Environmental emergencies



Environmental Protection Laws

Framework Agreement Requirements

- Section 24.3 of the *Framework Agreement*:

*The First Nation environmental protection **standards** and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.*

- **Standards:**

- “A legally enforceable numerical limit (i.e., parts per billion of contaminant allowed in water or soil), or narrative statement, such as in a regulation, statute, contract, or other legally binding document, that has been adopted from a criterion or an objective” (CCME 1999).
- EP standards (or guidelines or objectives) included in provincial and federal regulations generally have been based on scientific study and are intended to protect human health or ecosystems from risks posed by specified concentrations of contaminants.
- It would be technically challenging and exceedingly costly for a First Nation to repeat the process of identifying acceptable contaminant standards for their lands. Hence, a First Nation should determine whether provincial and federal EP standards are suitable for its circumstances.
- Some adjustments to the standards could be made if deemed necessary (First Nations have total discretion in this regard), without unduly complicating the process of law enforcement or environmental monitoring.
- Review courselet titled: *Federal-Provincial Environmental Protection* on the www.labrc.com website for more information on EP standards in Canada and the provinces.

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Environmental Protection Laws

Inventory of Contaminated Site Guidelines and Standards in Selected Canadian Jurisdictions
 Prepared by Westland Resource Group for First Nations Lands Advisory Board
 November 2009 (<http://www.labrc.com/wp-content/uploads/2015/01/lab-contaminate-site-guidelines-inventory-2009.pdf>)

Colour coding for tables

- Federal guidelines, criteria, and standards
- British Columbia guidelines, criteria, and standards
- Alberta guidelines, criteria, and standards
- Saskatchewan guidelines, criteria, and standards
- Manitoba guidelines, criteria, and standards
- Ontario guidelines, criteria, and standards

Contaminated Agricultural and Natural Area Soil - Federal and Provincial Comparison of Guidelines and Standards

Contaminants	CCME (Guidelines)		British Columbia (Standards)	Alberta (Guidelines)				Saskatchewan (Guidelines)			Manitoba (Guidelines)		Ontario (Guidelines)
	Fine grained (mg/kg)	Coarse grained (mg/kg)	Generic and matrix numerical soil standards (µg/g)	Fine grained (mg/kg)	Coarse grained (mg/kg)	Natural Area fine grained (mg/kg)	Natural Area coarse grained (mg/kg)	Soil (General) (µg/g)	Subsoil (µg/g)	Forest soil (General) (µg/g)	Fine grained (mg/kg)	Coarse grained (mg/kg)	Surface soil (µg/g)
General and inorganic parameters													
pH (in 0.01 M CaCl ₂)	6-8	6-8		6-8.5	6-8.5	6-8.5	6-8.5	6 - 8	6 - 8	4 - 7	6-8	6-8	
Cyanide (Free)	0.9	0.9	2 to 3 (matrix standard)	0.9	0.9	0.9	0.9	0.9			0.9	0.9	100
Fluoride	400	200	200	200	200	200	200	200 - 400			400	200	
Sulphur (elemental)	0	500	4	500	500	500	500	0 - 500			0	500	
Metals													
Antimony	20	20	20	20	20	20	20	20			20	20	13
Arsenic (inorganic)	12	12	15 - 100 (matrix standard)	17	17	17	17	12			12	12	(25) 20
Barium	750	750	400 - 6500 (matrix standard)	750	750	750	750	750	2,000	500	750	750	(1000) 750
Barite-barium				3,200	3,200	3,300	3,300						
Beryllium	4	4	4	5	5	5	5	4			4	4	1.2
Boron (hot water soluble)	0	2	2	2	2	2	2	0 - 2			0	2	1.5+
Cadmium	1.4	1.4	1.5 - 1000 (matrix standard)	1.4	1.4	3.8	3.8	1.4	27	10	1.4	1.4	(4.0) 3.0
Chromium (hexavalent)	0.4	0.4		0.4	0.4	0.4	0.4	0.4			0.4	0.4	
Chromium (total)	64	64	50 - 300 (matrix standard)	64	64	64	64	64	87	64	64	64	(1000) 750
Cobalt	50	40	40	20	20	20	20	40 - 50			50	40	(50) 40
Copper	63	63	150 - 350,000 (matrix standard)	63	63	63	63	63	100	63	63	63	(200) 150
Lead	70	70	100 - 100,000 (matrix standard)	70	70	70	70	375	1,000	500	70	70	200
Mercury (inorganic)	6.6	6.6	0.6 - 100 (matrix standard)	6.6	6.6	12	12	6.6	30	6.6	6.6	6.6	10
Molybdenum	10	5	5	4	4	4	4	5.0 - 10.0			10	5	5
Nickel	50	50	150	50	50	50	50	150	500	100	50	50	(200) 150
Selenium	1	1	2	1	1	1	1	1			1	1	2
Silver	20	20	20	20	20	20	20	20			20	20	(25) 20
Thallium	1	1	2	1	1	1	1	1			1	1	4.1
Tin	50	5	5	5	5	5	5	50			50	5	
Uranium	23	23		23	23	33	33						
Vanadium	130	130	200	130	130	130	130	130	130	130	130	130	(250) 200
Zinc	200	200	150 - 35,000 (matrix standard)	200	200	200	200	200	380	200	200	200	(800) 600



Environmental Protection Laws

General Provisions to consider including in an EP Law:

- Recommend including a general provision stating that:
 - No person shall discharge a contaminant into the environment, and no person responsible for a contaminant shall permit it to discharge into the environment, in an amount, concentration or level in excess of the prescribed standards*
- *A First Nation's EP law must specifically reference the provincial, federal or other standards that will be used to set the maximum allowable concentrations of a potentially contaminating substance into the environment
- Provisions for Contaminated sites management:
 - How is it determined that a site is contaminated (e.g., Contaminated site assessments)?
 - Records management (Contaminated sites registry)
 - Who is liable/responsible for the remediation of a contaminated site?
 - How and when is remediation implemented?
- Provisions a 'statute of limitation' (i.e., For what period of time after a spill or contamination occurred is a person still responsible for it? Does that time period start when the spill or contamination occurred, or when the First Nation became aware of it?)
- Provisions for spill prevention, preparedness, reporting and response
- Provisions for dealing with environmental emergencies
- Licensing and approval of waste management sites and facilities
- Also consider including general provisions to outline:
 - Ability to hire or retain qualified professionals/consultants for EP Law Implementation and enforcement
 - Offences
 - Powers and duties for enforcement
 - Penalties for offences and contravention



Environmental Protection Laws

Offences to Consider Including in an EP Law:

- Causing the release of a contaminant into the environment
- Failing to take actions to prevent or stop the release of a contaminant into the environment
- Failing to report the release of a contaminant into the environment
- Operating an unlicensed waste management site or facility
- Improper disposal of wastes or hazardous materials
- Other offence provisions to consider including:
 - Failure to obtain a license, approval, permit, or authorization as required under the EP law
 - Failure to follow any of the conditions of a license, approval, permit or authorization issued under the EP Law
 - Providing false information
 - Failure to follow an order (i.e.: stop work order, remedial order)
 - Interfering with an enforcement officer performing his or her duties under the EP law



Enforcement of Environmental Laws

Community Involvement and Enforcement

- One of the best ways to ensure a First Nation Land Law is followed is to involve the community.
- Community involvement can help to identify when a law is needed and what it should include.
- Additionally, First Nation Land Codes set out the enactment process for land laws, often requiring community consultation, education, and voting procedures.
- 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.
- It is recommended that enforcement personnel first work with offenders where appropriate to achieve voluntary compliance with a law, rather than going straight to the courts.



enforcement &
compliance



Enforcement of Environmental Laws

Powers for Enforcement

- It is recommended that measures for enforcing an environmental law be specified in the law itself. A First Nation's legal counsel are recommended to ensure that enforcement measures in the environmental law are both appropriate for the purposes of the EP regime and consistent with enforcement provisions contained in the First Nation's other laws.
- In considering enforcement measures, a First Nation should be aware that those provisions will apply to the First Nation as well as non-First Nation project proponents.
- It is also recommended that measures to address proponents' non-compliance and powers and duties for enforcement personnel be included in the environmental law.
- Factors to consider:
 - How will the First Nation ensure that their law is followed?
 - Who will be enforcing this law?
 - How are enforcement officers appointed?
 - What activities can enforcement officers undertake?
 - Monitoring
 - Inspections
 - Investigations
 - What enforcement powers do enforcement officers have?
 - Search & Seizure
 - Sampling, testing & taking measurements
 - What actions can enforcement officers take to ensure or compel compliance?
 - Issuing Warnings, Tickets, & Orders
 - Injunctions
 - Prosecutions
 - What are the penalties for non-compliance?



Enforcement of Environmental Laws

Enforcement Officers

- Enforcement officers are responsible for enforcing the requirements of a First Nation's environmental laws. Details of who designates someone to be an enforcement officer and their responsibilities and powers must be outlined in a First Nation's environmental laws and should be consistent between various laws.
- Responsibilities of enforcement officers:
 - carrying out inspections to verify compliance with environmental laws, decisions made under those laws, and any conditions specified in the decision statement, authorization or permit;
 - issuing orders directing corrective measures where there is an alleged contravention of an environmental law, its accompanying regulations and the conditions in a decision statement, authorization or permit;
 - taking other measures to compel compliance, such as issuing orders, directions and prohibitions;
 - investigating suspected contraventions; and
 - undertaking measures to compel compliance through court action, such as injunctions and prosecution.



Enforcement of Environmental Laws

Enforcement Activities

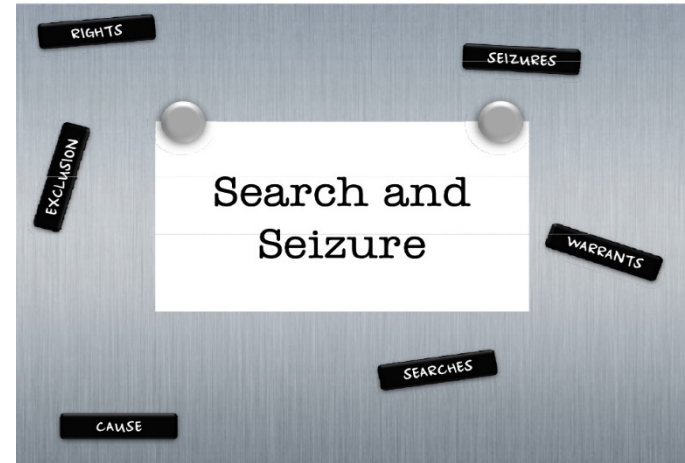
- **Monitoring:**
 - involves collecting and analyzing information on the state of the environment in order to identify changes and trends over time. An integral part of scientific research, it is also a means of verifying whether policies and programs are having the desired results and if activities are in compliance with legislation (i.e., compliance monitoring).
- **Inspection:**
 - Any activity to verify compliance; includes a review of documents or any other information related to a project and can be both off-site and on-site inspections.
 - Inspections are formal examinations carried out by someone in an official capacity at a specific time and place to observe whether some activity or development meets the required standards.
 - Inspections are a critical component of enforcing environmental legislation and protecting environmental health in matters as diverse as food safety, water quality, air quality, pest management, sanitation, noise control and injury prevention.
- **Investigation:**
 - The process by which evidence is gathered to confirm whether there is an alleged contravention of an environmental law.



Enforcement of Environmental Laws

Enforcement Powers

- **Search & Seizure:**
 - when there are reasonable grounds to believe that an offence has occurred, allows enforcement officers to enter onto premises, open containers to examine their contents, access information (including paper and computer files and data), and seize or take copies of any information or objects that may serve as evidence in court proceedings
 - May or may not require a warrant
- **Sampling, testing & taking measurements:**
 - allows enforcement officers to take samples (soil, water, air) for field or laboratory testing or to take other measurements in the field to verify compliance or in response to suspected non-compliance
 - Enforcement Officers must therefore have some training and expertise in scientific measurement and sampling procedures, sample storage and preservation, chain of custody, etc.



Enforcement of Environmental Laws

Enforcement Actions

- **Warnings:**

- can be written or verbal
- used when an enforcement officer wants to draw an offence to the attention of the offender and provide notice that a repeat of the offence may attract more serious sanctions
- are not a conviction or a finding of guilt
- enforcement officers must keep records of all warnings issued (written and verbal) and any actions undertaken by the offender to restore compliance in response to the warning



- **Tickets/Violation Tickets:**

- typically issued in the field for minor offences such as littering and specifies the corresponding fine amount
- can be either paid or disputed
- not paying or disputing a ticket within a defined time frame means the ticket holder is considered to have plead guilty, and the full amount is due immediately



- **Orders:**

- issued when the enforcement officer believes, on reasonable grounds, that there has been a contravention of the environmental law
- may order a person do stop doing something that is a contravention, cause it to be stopped, or take any measure necessary to comply or mitigate the effects of non-compliance
- must be in writing and must include the reasons for the order and the time and manner in which it must be carried out
- can include stop work orders, remedial orders, other orders

(Con't...)



Enforcement of Environmental Laws

Enforcement Actions

- **Injunctions:**

- injunctions are court orders requiring an individual to do or refrain from a specific action to prevent harm to persons or property or otherwise ensure Justice
- Can lead to financial penalties for failure to comply with an injunction



- **Prosecution:**

- legal proceedings in which a person (or corporation) accused of an offence is tried in a court
- the means adopted to bring a supposed offender to justice and punishment by due course of law; its purpose is to determine guilt or innocence of a person charged with crime.
- enforcement officers will need to rely on lawyers to prosecute alleged offences in the court system
- The FA currently provides for First Nations to appoint their own prosecutors, or to turn to federal or provincial prosecutors (note that Phase I FA amendments will drop the express reference to federal prosecutors)



- **Court of Competent Jurisdiction for FN Environmental Laws:**

- As discussed in previous presentations, the FA provides an option to appoint Justices of the Peace – a ruling by a Justice of the Peace can be appealed to a court of competent jurisdiction (likely provincial courts)
- Work is currently underway to develop practical arrangements with provincial courts across Canada
- A traditional court system is not expressly provided for in the FA – but might be a longer term option



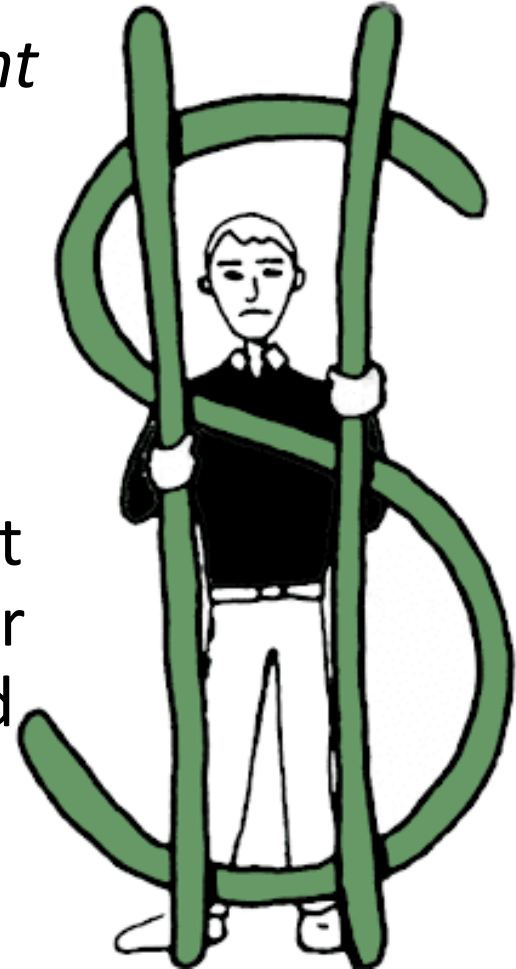
Environmental Laws

Penalties

- Section 24.3 of the *Framework Agreement* states:

*The First Nation environmental protection standards and **punishments** will have at least the same effect as those in the laws of the province in which the First Nation is situated.*

- First Nations will therefore have to look at the applicable environmental laws in their province when determining penalties and punishments for contraventions of their environmental laws.



Environmental Laws – Eastern Region

Penalties

- **Ontario EA Law:**
 - *Environmental Assessment Act*, R.S.O. 1990, c. E.18 <https://www.ontario.ca/laws/statute/90e18>
- **Ontario EP Law:**
 - *Environmental Protection Act*, R.S.O. 1990, c. E.19 <https://www.ontario.ca/laws/statute/90e19>
- **Quebec EA & EP Law:**
 - *The James Bay and Northern Quebec Agreement* (North) <http://www.gcc.ca/pdf/LEG000000006.pdf>
 - *Loi sur la qualité de l'environnement* (*Environment Quality Act*) (Southern Quebec), L.R.Q., c. Q-2 <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/Q-2>
- **New Brunswick EA & EP Law:**
 - *Clean Environment Act*, R.S.N.B. 1973, c. C-6 <https://www.canlii.org/en/nb/laws/stat/rsnb-1973-c-c-6/latest/rsnb-1973-c-c-6.html>
 - *Environmental Impact Assessment Regulation*, NB Reg 87-83 <https://www.canlii.org/en/nb/laws/regu/nb-reg-87-83/latest/nb-reg-87-83.html>
- **Newfoundland and Labrador EA & EP Law:**
 - Newfoundland and Labrador *Environmental Protection Act* <http://www.assembly.nl.ca/legislation/sr/statutes/e14-2.htm>
 - Newfoundland and Labrador *Environmental Assessment Regulations*, 2003 (O.C. 2003-220) <http://www.assembly.nl.ca/Legislation/sr/Regulations/rc030054.htm>
- **Nova Scotia EA & EP Law:**
 - *Environment Act*, S.N.S. 1994-95, c. 1 <https://www.canlii.org/en/ns/laws/stat/sns-1994-95-c-1/latest/sns-1994-95-c-1.html>
 - *Environmental Assessment Regulations* <https://www.novascotia.ca/just/regulations/regs/envassmt.htm>
- **Prince Edward Island EA & EP Law:**
 - *Environmental Protection Act*, R.S.P.E.I. 1988, c. E-9 <https://www.princeedwardisland.ca/sites/default/files/legislation/E-09-Environmental%20Protection%20Act.pdf>



Environmental Laws – Eastern Region - Ontario



Environmental Assessment Act

- Provision Requiring an EA- Section 5(3):

(1) No person shall proceed with an undertaking unless the Minister gives his or her approval to proceed under section 9 or the Tribunal gives its approval under section 9.1.

- Penalties - Section 38:

Every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this Act or the regulations or fails to comply with an order or a term or condition of an approval issued or given under this Act is guilty of an offence and on conviction is liable on a first conviction to a fine of not more than \$10,000 and on a subsequent conviction to a fine of not more than \$25,000 for every day or part thereof upon which the offence occurs or continues.



Environmental Laws – Eastern Region - Ontario



Environmental Protection Act :

- Provisions Regarding Discharge of Contaminants:
 - Includes provisions pertaining to the discharge of contaminants into the environment (Sections 6 & 14), engaging in unregistered activities (Section 20.21), deposit of wastes and unregistered waste disposal sites (Sections 40 & 41), vehicle permits and plates (Section 53), ozone depleting substances and their manufacture (Sections 58 & 59), and the use or sale of packaging and products that cause waste management issues (Section 88)
- Offences – Section 186:

(1) Every person who contravenes this Act or the regulations is guilty of an offence.

(1.1) Subsection (1) does not apply to a contravention of section 14 unless the contravention causes or is likely to cause an adverse effect.

(2) Every person who fails to comply with an order under this Act, other than an order under section 99.1, 100.1, 150 or 182.1, is guilty of an offence.

(3) Every person who fails to comply with the terms and conditions of an environmental compliance approval, certificate of property use or renewable energy approval or of a licence or permit under this Act or who fails to comply with the terms of a report under section 29 is guilty of an offence.

(3.1) Every person who fails to pay a fee that the person is required to pay under section 179.1 is guilty of an offence.

(4) Despite subsections (1), (2) and (3), a person to whom an order of the Minister, the Director or a provincial officer or a program approval of the Director is directed who complies fully with the order or approval shall not be prosecuted for or convicted of an offence in respect of the matter or matters dealt with in the order or approval that occurs during the period within which the order or program approval is applicable.

(5) The protection from prosecution under subsection (4) does not include protection from the imposition of an environmental penalty.



Environmental Laws – Eastern Region - Ontario



Environmental Protection Act:

- **Offences and Penalties – Section 187:**

(1) Every individual convicted of an offence under section 186, other than an offence described in subsection (3), is liable,

(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$50,000; and

(b) on each subsequent conviction,

(i) for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$100,000,

(ii) to imprisonment for a term of not more than one year, or

(iii) to both such fine and imprisonment.

(2) Every corporation convicted of an offence under section 186, other than an offence described in subsection (3), is liable,

(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$250,000; and

(b) on each subsequent conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$500,000.



Environmental Laws – Eastern Region - Ontario



Environmental Protection Act:

- Offences and Penalties – Section 187 (continued):

(3) Subsections (4) and (5) apply to the following offences:

1. An offence under subsection 186 (1) of,

i. contravening section 14 or 15,

ii. contravening section 27, 40, 41 or 47.3 in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V,

iii. contravening section 92 or 184, or

iv. contravening a provision of the regulations that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.

2. An offence under subsection 186 (2) of failing to comply with an order under this Act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.

3. An offence under subsection 186 (3) of failing to comply with a term or condition of an environmental compliance approval, certificate of property use, renewable energy approval, licence or permit under this Act, or a report under section 29, that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.

4. An offence under subsection 194 (2) that relates to a contravention or failure to comply referred to in paragraph 1, 2 or 3.

(4) Every corporation convicted of an offence described in subsection (3) is liable, for each day or part of a day on which the offence occurs or continues, to a fine of,

(a) not less than \$25,000 and not more than \$6,000,000 on a first conviction;

(b) not less than \$50,000 and not more than \$10,000,000 on a second conviction; and

(c) not less than \$100,000 and not more than \$10,000,000 on each subsequent conviction.

(5) Every individual convicted of an offence described in subsection (3) is liable,

(a) for each day or part of a day on which the offence occurs or continues, to a fine of,

(i) not less than \$5,000 and not more than \$4,000,000 on a first conviction,

(ii) not less than \$10,000 and not more than \$6,000,000 on a second conviction, and

(iii) not less than \$20,000 and not more than \$6,000,000 on each subsequent conviction;

(b) to imprisonment for a term of not more than five years less one day; or

(c) to both such fine and imprisonment.



Environmental Laws – Eastern Region - Quebec

- **The James Bay and Northern Quebec Agreement (Northern Quebec):**

The environmental protection regimes defined by the JBNQA, and included in Chapter II of the Environmental Quality Act, are aimed at ensuring special participation to the environmental assessment process by the Natives so that they can protect the rights and guarantees granted to them under the Agreement. This participation is assured through consultation and representation mechanisms, within which the Crees and Inuit have major roles

- **Loi sur la qualité de l'environnement (Environment Quality Act) (Southern Quebec)**

- Offences and Penalties - Section 115.31 (7), 115.32 (7) and 125.33 :

115.31

Whoever

(7) carries out a project, carries on an activity or does something without first obtaining any other authorization required under this Act or the regulations, in cases where no other penalty is provided for in this Act or the regulations, or

commits an offence and is liable, in the case of a natural person, to a fine of \$5 000 to \$500 000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1) to a maximum term of imprisonment of 18 months, or to both the fine and imprisonment, and, in any other case, to a fine of \$15,000 to \$3,000,000.

115.32

Whoever

(7) carry out a project, carry on or pursue an activity or do something even though

(a) the issue or renewal of the approval, authorization, certificate, attestation, accreditation or certification required under this Act has been refused, or

(b) the approval, authorization, certificate, attestation, accreditation or certification required under this Act has been suspended or revoked,

commits an offence and is liable, in the case of a natural person, to a fine of \$10 000 to \$1 000 000 or, despite article 231 of the Code of Penal Procedure (chapter C-25.1) to a maximum term of imprisonment of three years, or to both the fine and imprisonment, and, in any other case, to a fine of \$30,000 to \$6,000,000.

125.33

The maximum penalties prescribed in section 115.32 apply to an offence described in sections 115.29 to 115.31 if the harm or damage caused by the offence to human health or the environment, including vegetation and wildlife, is sufficiently serious to justify heavier penalties.



Environmental Laws – Eastern Region – New Brunswick

- Provision Requiring an EA - **Environmental Impact Assessment Regulation**, Section 4 :

No proponent shall carry on an undertaking unless

(a) the Minister has made a determination that the undertaking may be carried on without the completion of an environmental impact assessment, or

(b) the Lieutenant-Governor in Council, following the completion of a required environmental impact assessment, has given an approval for the carrying on of the undertaking.

- Offences & Penalties - **Clean Environment Act**, Section 33 :

(1) Subject to subsection (3), a person who violates any provision of this Act or the regulations or fails to comply with an order issued under this Act or the regulations or with a term or condition of an approval, registration, licence, permit, exemption or determination granted, issued or made under this Act or the regulations commits an offence and is liable, on conviction,

(a) in the case of an individual, to a fine of not less than five hundred dollars and not more than fifty thousand dollars, and

(b) in the case of a person other than an individual, to a fine of not less than one thousand dollars and not more than one million dollars.

(2) If a violation of a provision of or a failure to comply under this Act or the regulations continues for more than one day, the fine payable shall be the product of

(a) the fine imposed under subsection (1), and

(b) the number of days on which the violation or failure continues.



Environmental Laws – Eastern Region – Newfoundland and Labrador

Newfoundland and Labrador Environmental Protection Act:

- Provision Requiring an EA- Section 48:
A person shall not proceed with an undertaking unless that undertaking has been exempted or released under this Act.
- Offences - Section 114.
 - (1) *A person who*
 - (a) *provides false or misleading information under a requirement under this Act or the regulations to provide information;*
 - (b) *does not provide information as required under this Act or the regulations;*
 - (c) *hinders or obstructs an inspector or another person who is exercising powers or carrying out duties under this Act or the regulations;*
 - (d) *contravenes a term or a condition of a licence issued under Part IX;*
 - (e) *contravenes a term or condition of an approval;*
 - (f) *contravenes an order made under this Act or the regulations;*
 - (g) *does not comply with a term or condition imposed under this Act or the regulations with respect to an undertaking; and*
 - (h) *contravenes this Act or the regulations,**is guilty of an offence.*
 - (2) *A person who, with respect to Part X and regulations made with respect to Part X*
 - (a) *provides false or misleading information in respect of a requirement to provide information;*
 - (b) *does not provide information as required under this Act;*
 - (c) *hinders or obstructs a person who is exercising powers or carrying out duties under this Act;*
 - (d) *does not comply with an order or direction made under this Act or the regulations by the minister or the Lieutenant-Governor in Council;*
 - (e) *does not comply with a term or condition imposed with respect to an undertaking; and*
 - (f) *otherwise contravenes Part X or regulations made with respect to Part X,**is guilty of an offence.*
 - (3) *Each continuance for a day or a part of a day of an offence referred to in this section constitutes a separate offence.*



Environmental Laws – Eastern Region – Newfoundland and Labrador

Newfoundland and Labrador Environmental Protection Act:

- Penalties - Section 115:

(1) A person found guilty of an offence under subsection 114(1) or another Part of this Act other than subsection 114(2) is liable on summary conviction

(a) in the case of a corporation, including a municipality,

(i) for a first conviction, to a fine of not less than \$1,000 and not more than \$1,000,000, and

(ii) for a subsequent conviction, to a fine of not less than \$4,000 and not more than \$1,000,000; and

(b) in the case of a person who is not a corporation, or municipality,

(i) for a first conviction, to a fine of not less than \$500 and not more than \$10,000 or to a term of imprisonment of not more than 3 months, or to both a fine and imprisonment, and

(ii) for a subsequent conviction, to a fine of not less than \$1,000 and not more than \$10,000 or to a term of imprisonment of not more than 6 months, or to both a fine and imprisonment.

(2) A person convicted of an offence under subsection 114(2) is liable on summary conviction

(a) in the case of a person who is not a corporation, to a fine of not less than \$1,000 and not more than \$50,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment; and

(b) in the case of a corporation, to a fine of not less than \$5,000 and not more than \$1,000,000.

(3) A person who is convicted for a second or subsequent time for an offence under subsection 114(2) that is a violation of the same paragraph of subsection 114(2) is liable on summary conviction

(a) in the case of a person who is not a corporation, to a fine of not less than \$3,000 and not more than \$50,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment; and

(b) in the case of a corporation, to a fine of not less than \$15,000 and not more than \$1,000,000.

(4) Where a corporation commits an offence under section 114, a person who is an officer, director or agent of the corporation and who directed, authorized, assented to, acquiesced in or participated in that offence is liable, on summary conviction, to the punishments provided in paragraphs (2)(b) and (3)(b) and, in default of payment of the fines imposed under those paragraphs, the court may impose upon that person a term of imprisonment not exceeding 6 months.

(5) Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of that offence, monetary benefit accrued to the offender, the court may order the offender to pay, in addition to a fine under this section, a fine in an amount equal to the estimation of the court of the amount of those monetary benefits.

(6) Where a person is convicted of an offence under this Act and that person fails to comply with an order of the court under subsection (5) or section 119, that person commits an offence and is liable on summary conviction to a penalty referred to in subsection (3).

(7) Notwithstanding subsection (1), where, with respect to an offence under this Act or regulations made under this Act, other than under subsection 114(2), a complaint is laid and a summons issued by means of a ticket in accordance with the Provincial Offences Act, a person found guilty of that offence is liable on summary conviction to a fine that may be established by regulation.



Nova Scotia

Environment Act:

- Provision Requiring an EA - Section 32 :

(1) Until the Minister has notified the proponent in writing that an undertaking is approved, no person shall commence work on the undertaking.

(2) The Minister may impose conditions upon the approval of an undertaking and the proponent shall comply with the conditions if the undertaking proceeds.

- Offence - Section 158:

A person who

(a) knowingly provides false or misleading information pursuant to a requirement under this Act to provide information;

(b) provides false or misleading information pursuant to a requirement under this Act to provide information;

(c) does not provide information as required pursuant to this Act;

(d) hinders or obstructs an inspector or administrator who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;

(e) knowingly contravenes a term or condition of an approval, an environmental assessment approval, a temporary approval, a certificate of variance or a certificate of qualification;

(f) contravenes a term or condition of an approval, an environmental assessment approval, a temporary approval, a certificate of variance or a certificate of qualification;

(g) knowingly contravenes an order;

(ga) knowingly contravenes a directive;

(h) contravenes an order;

(ha) contravenes a directive;

(hb) contravenes subsections 50(1), 61A(1), 61C(1), 67(1), 68(1) or 112D(1);

(i) contravenes Section 32, subsection 50(2), Sections 55, 59 or 60, subsections 61A(2) or 61C(2), Section 62, subsection 67(2) or 68(2), Sections 69, 71, 75, 76, 79, 83 or 132 or a regulation made pursuant to subsection 106(6);

(j) otherwise contravenes this Act or the regulations,

is guilty of an offence.



Environmental Laws – Eastern Region – Nova Scotia

Environment Act:

- Penalty - Section 159 and 159A:

159

- (1) A person who commits an offence referred to in clause 158(a) (e) (a) (aa) or (hb) is liable on summary conviction to a fine of not less than one thousand dollars and not more than one million dollars or to imprisonment for not more than two years, or to both a fine and imprisonment.
- (2) A person who commits an offence referred to in Section 89, 115 or 124 or clause 158(b) (c) (d) (f) (h) (ha) or (i) is liable on summary conviction to a fine of not more than one million dollars.
- (3) A person who commits an offence referred to in clause 158(i) is liable on summary conviction to a fine of not more than five hundred thousand dollars.

159A

- (1) In this Section, “business” means
 - (a) a person authorized or entitled to carry on a trade, occupation, profession, service or venture with a view to a profit, including a partnership and a limited partnership; or
 - (b) a corporation.
- (2) A business that commits an offence referred to in Section 99 is liable to a fine of not more than one hundred thousand dollars or the fine prescribed in the regulations.
- (3) Notwithstanding clause 3(aj), a person, other than a business, who commits an offence referred to in Section 99 is liable to a fine of not more than ten thousand dollars or the fine prescribed in the regulations.



Environmental Laws – Eastern Region – Prince Edward Island

Environmental Protection Act:

- Provision Requiring an EA - Section 9(1):

No person shall initiate any undertaking unless that person first files a written proposal with the Department and obtains from the Minister written approval to proceed with the proposed undertaking.

- Offence & Penalty - Section 32:

*(1) Any natural **person** who contravenes or violates*

(a) any provision of this Act or the regulations; or

(b) any term, condition or provision of any order, including an environmental protection order, license, certificate, approval, permit, endorsement on a permit, permission or other authorization issued under this Act or the regulations,

*is guilty of an offence and if no penalty is otherwise specifically provided in this Act or the regulations, is liable on summary conviction to a fine of not less than **\$200** or more than **\$10,000**, or to **imprisonment for 90 days, or to both**, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.*

(2) Repealed by 2008,c.13,s.13.

*(3) Any **corporation** which contravenes or violates*

(a) any provision of this Act or the regulations; or

(b) any term, condition or provision of any order, including an environmental protection order, license, certificate, approval, permit, endorsement on a permit, permission or other authorization issued under this Act or the regulations,

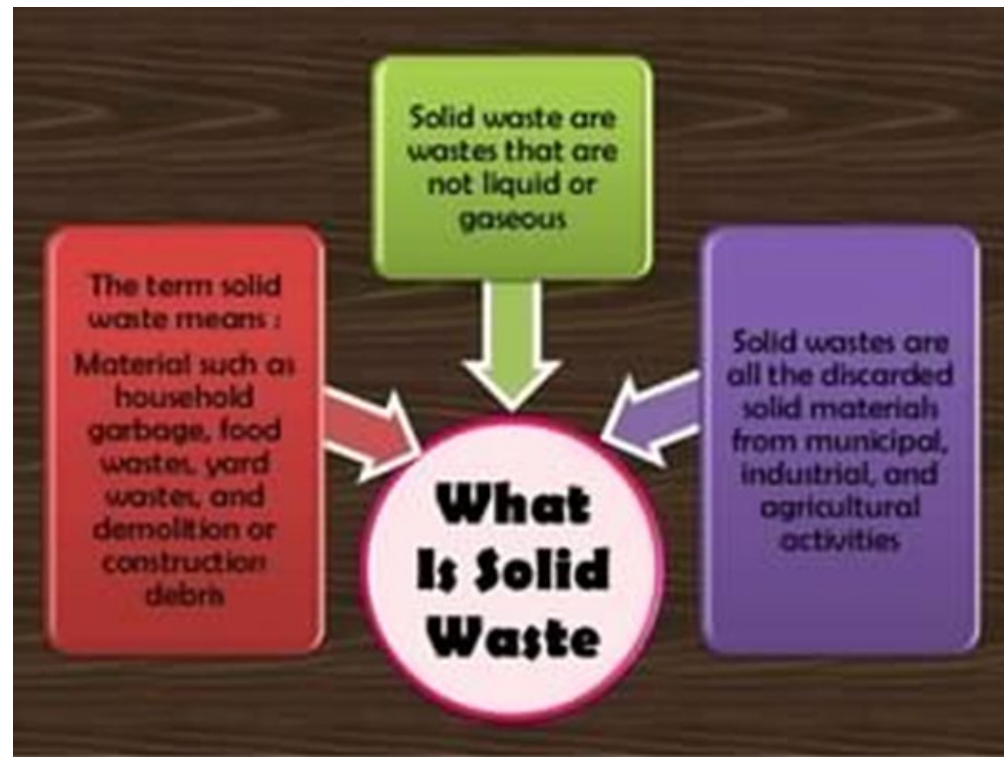
*is guilty of an offence and if no penalty is otherwise specifically provided in this Act or the regulations, is liable on summary conviction to a fine of not less than **\$1,000** or more than **\$50,000**, or its directors to **imprisonment for 90 days, or to both**, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.*



Solid Waste Management Laws – Breakout Session

What is Solid Waste?

- General term for all discarded materials other than fluids and gases
 - Includes household garbage, recyclables, organic materials, old tires, hazardous wastes, construction and demolition wastes and large, bulky items, etc.



Solid Waste Management Laws – Breakout Session

Consider developing a solid waste management law for your First Nation. What are the:

- **Current Practices and Issues**
 - For solid waste management on your reserve
 - Any future initiatives that need to be taken into consideration?
- **General Provisions and Offences**
 - What are some of the general provisions and offences you would include in your solid waste management law?
- **Enforcement**
 - Who would be responsible for enforcing your law, how are they appointed, and what powers would they have?
- **Penalties**
 - Tickets, fines, alternative options



Solid Waste Management Laws – Example Responses

Current Practices and Issues

- Area serviced
 - Number of households
 - Number of businesses
 - Industries
 - Total reserve area
- Waste Streams/Solid Waste Characterization
 - household wastes
 - Recycling
 - hazardous wastes
 - industrial and construction wastes
 - bulky items, and
 - approximate volume of each
- Waste Collection/Drop-off
- Disposal Methods
 - community landfill
 - Transfer station
 - Recycling
 - Composting
 - Special wastes
 - Agreements with neighboring municipalities
- Other Solid Waste Management Concerns on Reserve
 - Illegal dumping
 - Lifespan of existing solid waste management infrastructure
 - Improperly designed landfill
 - Closure of old landfills
 - Composting
 - pests
- Future Solid Waste Management Initiatives
 - New landfill site or waste transfer station
 - New or increased recycling initiatives
 - Agreements with neighboring municipalities
 - Curbside pick-up
 - User fees



Solid Waste Management Laws – Example Responses

General Provisions and Offences

- Every person within the First Nation must dispose of all waste generated on their parcel of land in accordance with this law
- Recyclable and compostable materials and hazardous wastes must be separated from other wastes and packaged in clear plastic garbage bags or designated containers.
 - Include definitions for household wastes, recyclables, compostable materials and hazardous wastes
 - Include details on how recycling and other wastes are to be separated
- All wastes, recycling, compostable materials and hazardous wastes must be disposed of in the appropriate areas or containers at a designated landfill or transfer station or placed on the curb for pick-up on the designated days.
- No person shall place or mix household waste and household hazardous waste in the same container or bag for removal as household waste.
- No off-reserve Band Members or non-members not residing within the reserve are permitted to dispose of wastes at the _____ First Nation community landfill or transfer station.
- No owner, renter or lessee shall accumulate wastes or allow wastes to accumulate on any property in which they have an interest.
- No person may dispose of wastes on reserve outside of the designated landfill or transfer station.
- No person may enter onto the landfill site or transfer station site outside of operating hours without permission from the _____ First Nation or sanitation administrator.
- No person may improperly dispose of wastes at the designated landfill or transfer station.
- No person may interfere with a sanitation administrator or enforcement officer performing his or her duties under this law.



Solid Waste Management Laws – Example Responses

Enforcement

- Who would be responsible for enforcing your law, how are they appointed, and what powers would they have?
- Definition of enforcement officer - example:
 - “Enforcement Officer” means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of the _____ First Nation Solid Waste Management Law enacted by Council and includes any delegate and any assisting personnel as required and requested by an Enforcement Officer, or any peace officer as defined, or any other person appointed by Council for the purpose of maintaining law and order on the First Nation.
- Details of how an enforcement officer is appointed – by Council?
- Ability for enforcement officer to request community members to disclose the contents of any container containing solid waste intended for disposal at the community solid waste disposal facility
- Ability for enforcement officers to open and inspect any container containing solid waste intended for disposal at the community solid waste disposal facility
- Ability to refuse to accept solid waste that is improperly separated, that is considered hazardous, that is being disposed of by an unauthorized person (i.e.: non-member or non-interest holder), or that is known to originate from an off-reserve source or location
- Ability to issue tickets, warnings, offences, etc.



Solid Waste Management Laws – Example Response

- Penalties
 - Tickets: for which activities can a ticket be issued, what are the fines associated with the tickets, timeframe for payment, etc. (also need to specify what information is to be recorded on the ticket, such as name of offender, date and location of offence, details of offence, date payment is due, etc.)
 - Fines: same as above
 - Alternative options: refusal to pick up solid wastes, suspension of curbside pick-up, community clean-up in lieu of fines, imprisonment (duration, and for what offences), etc.
 - Recurring offences: additional or increasing fines and charges for each day an offence continues





If you require further information please contact:

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