

Opaskwayak Cree Nation

Land Law

OPASKWAYAK CREE NATION

**USKI PA MI CHE KA WIN
(PROTECTING THE LAND)**

Enacted this 11th day of April, 2016

Land Law 2016/001

Opaskwayak Uski-pa-mi-che-ka-win (Protecting the Land)

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Chapter 1. OUR VISION

- I. The Opaskwayak Cree Nation asserts that we, the Opaskwayak *ininiwak*, have always governed ourselves according to *oneschekāwina*, our sacred laws. These laws were given to us from the Creator and were passed on to us through oral tradition.
- II. Our understanding of the universe is based on *wakotowin* and the knowledge that all living things are interconnected. According to our worldview, *uski*, which means the land and everything connected to it, including the rivers, lakes, animals, insects, plants, and rocks, are alive and have a spirit. This philosophy is reflected in our language and our ceremonies and is why we refer to the land and everything on it as our relations.
- III. The philosophy of *wakotowin* means that we have a responsibility to nurture and maintain of all our relationships, including our relationship with *uski*, which we depend on for our survival. Our relationship with *uski* is deeply rooted in respect and gratitude.
- IV. Our identity, language, and culture are also inseparable from *uski*. We are a part of *uski*, and it is a part of us. We must therefore protect *uski* to preserve our land-based knowledge, our ceremonial sites, and our way of life.
- V. The Opaskwayak *ininiwak* have known since the beginning of time that if we allow *uski* to be destroyed, we also destroy ourselves. Accordingly, our sacred laws tell us that our relationship with *uski* must be based on principles such as harmony and reciprocity. Our sacred laws tell us that we cannot simply take from the land and that something must also be given back in return.
- VI. The Opaskwayak *ininiwak* also understand that *uski* must be shared for the enjoyment and benefit of all our people and preserved and protected for future generations.
- VII. The Opaskwayak Cree Nation entered into a solemn Treaty arrangement with Her Majesty's Government of the Dominion of Canada by adhesion to Treaty 5. In signing the Treaty, the Opaskwayak Cree Nation did not give up the right to govern ourselves.

- VIII. While we strive to follow our sacred laws and maintain a balanced and harmonious relationship with *uski*, we also govern ourselves in the spirit of progress and independence. We strengthen our community through social and economic growth providing a range of social, health, educational, and economic services necessary to support and enhance our standard of living.
- IX. The Opaskwayak *ininiwak* have rights to the land, water and resources situated on our homeland, with which we have maintained a balanced relationship and existed in harmony since time immemorial. The Opaskwayak Cree Nation, through a vote of our membership held on June 17, 18, 19 in 2002, have enacted and ratified our own *Land Code*. The purpose of the *Land Code* was to set out the principles, guidelines and processes by which we will exercise control and management over our lands and resources consistent with the *Framework Agreement on First Nation Land Management Act*.
- X. The *First Nations Lands Management Act* and *Framework Agreement* authorize the Opaskwayak Cree Nation to enact environmental laws in accordance with our *Land Code*.

THEREFORE THIS LAW IS ENACTED AS OPASKWAYAK USKI-PA-MI-CHE-KA-WIN (PROTECTING THE LAND) OF THE OPASKWAYAK CREE NATION as approved at a Community Meeting held to enact this Law.

Chapter 2. GENERAL

Section 2.01 Codification

- (1) This law shall be codified as the *Opaskwayak Uski-pa-mi-che-ka-win* (the "Law") and supersedes and complements all conflicting provisions or laws of the Opaskwayak Cree Nation.

Section 2.02 Purposes

- (1) The purposes of this *Opaskwayak Uski-pa-mi-che-ka-win* are:
 - (a) to ensure that OCN fulfills its duty to preserve and protect *uski*
 - (b) to develop an awareness and understanding of the sacred laws and traditions of the Opaskwayak *ininiwak*, related to maintaining a respectful and harmonious relationship with *uski*. Some of these include:
 - (c) to avoid the needless destruction of *uski*
 - (d) to avoid the needless waste of *uski*
 - (e) to avoid the overuse of *uski*
 - (f) to promote an understanding that *uski* is a gift to be shared to develop an awareness and understanding of the dependent nature of the relationship that the Opaskwayak *Ininiwak* have with *uski* and the recognition that *uski* sustains them
 - (g) to develop an awareness and understanding of the importance of reciprocity and the balance that must be maintained in interactions with *uski*
 - (h) to build an awareness and understanding of the traditional concept of *pastahōwin*, which constitutes crossing a sacred line and committing an unacceptable action towards *uski*
 - (i) to build an awareness and understanding of the related traditional concept of *pastahowin*, which is the *ininiwak* law of consequence. According to this concept, negative consequences will result when a person commits an unacceptable action towards *uski* or fails to act and protect *uski*
 - (j) to provide for the environmental protection and management of the lands of the Opaskwayak Cree Nation

- (k) to promote and protect the quality of life and socio-economic development and ecological health of the Opaskwayak Cree Nation for the present and future generations
- (l) to ensure that designated projects on OCN land are considered in a careful and precautionary manner to avoid significant adverse environmental effects
- (m) to prohibit the unauthorized release of pollutants and actions of any third party having a significant adverse effect on the environment on Opaskwayak lands
- (n) to promote cooperation between any level of government, *ininiwak* or non-*ininiwak*, with respect to environmental assessments
- (o) to promote communication with surrounding Indigenous or non-Indigenous peoples with respect to environmental assessments
- (p) to ensure that opportunities are provided for meaningful community input and consultation with regards to all community members such as men, women, youth and particularly the guidance of Elders
- (q) to ensure that an environmental assessment is completed in a timely manner
- (r) to encourage OCN governing bodies to take a balanced approach to its social and economic activities in a way that preserves its sacred relationship with *uski*
- (s) to encourage the study of the cumulative effects or adverse environmental impacts of physical activities in a region and the consideration of those study results in environmental assessments
- (t) complementary to and supports existing and future Opaskwayak Cree Nation environmental laws, regulations, codes, planning, programs and policies
- (u) to provide for an environmental assessment process to govern the evaluation of projects on Opaskwayak lands, which are likely to have significant adverse environmental effects
- (v) to provide for the recognition and utilization of existing review processes of the Opaskwayak Cree Nation that address environmental regulation on Opaskwayak lands

- (w) to provide for public consultation in environmental decision making on Opaskwayak lands, while recognizing the decision making authority and jurisdiction of elected government at Opaskwayak Cree Nation, and
- (x) to encourage Opaskwayak Cree Nation's environmental processes to be in accordance with Opaskwayak *Ininiwak* traditions, practices, and sacred laws relating to *uski*, including land use management and environmental protection.

Section 2.03 Harmonization

- (1) It is the intent of the Opaskwayak Cree Nation to harmonize this *Law* with Acts of Parliament and relevant provincial legislation pertaining to environmental standards in accordance with the *First Nations Land Management Act* of Canada.

Section 2.04 Jurisdiction of the Opaskwayak Cree Nation

- (1) This Law applies to all persons, including corporations, residents and non-residents, for violations of the laws of the Opaskwayak Cree Nation that occur on OCN land.
- (2) This Law, or any law, regulation, program, or service associated with this Law is not intended to be a waiver or modification of any sovereign immunity or jurisdiction now enjoyed by the Opaskwayak Cree Nation.
- (3) The Opaskwayak Cree Nation reserves the right to contest the jurisdiction of any Court, body, government or suit filed against it, except as expressly waived by the *Opaskwayak Uski-pa-mi-che-ka-win*.
- (4) The Opaskwayak Cree Nation, the Council of the Opaskwayak Cree Nation, the Opaskwayak Cree Nation Environmental Division ("Authority"), and all other Opaskwayak Cree Nation employees, representatives and agents, who are performing their duties by carrying out any provision of this Law and any related regulations or laws, are immune from suit for damages in any court.

Section 2.05 Laws in force on Opaskwayak Cree Nation Lands

- (1) In the case of an inconsistency or conflict with laws and regulations of other governments, the *Opaskwayak Uski-pa-mi-che-ka-win* and regulations as amended must apply to the Opaskwayak Cree Nation.

Section 2.06 Application of Law

- (1) Where any federal Act or regulation or provincial Act or regulation or any other Opaskwayak Cree Nation law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law

Section 2.07 Law Making Powers

- (1) The Opaskwayak Cree Nation may enact environmental protection and environmental assessment laws, including but not limited to those set out in the *First Nations Land Management Act* and the Framework Agreement, and those laws may include without limitation the following:
 - (a) Agriculture Activities Protection Law
 - (b) Air Quality Protection Law
 - (c) Environmental Emergencies
 - (d) Forestry and Resource Extraction
 - (e) Surface Water and Groundwater Protection Law
 - (f) Hazardous and Toxic Substances Law
 - (g) Ecological and Cultural Land Protection Law
 - (h) Sewage Treatment and Disposal Law
 - (i) Soil Contamination Law
 - (j) Solid Waste Management Law
 - (k) Any other areas of law that are deemed fit.

Section 2.08 Opaskwayak Uski-pa-mi-che-ka-win

- (1) The *Opaskwayak Uski-pa-mi-che-ka-win* applies to the Opaskwayak Cree Nation. In the case of an inconsistency or conflict with Acts and regulations of other governments, *Opaskwayak Uski-pa-mi-che-ka-win* and regulations as amended will apply to the Opaskwayak Cree Nation.

Section 2.09 Definitions

- (1) In this Law, unless the context otherwise requires, the following terms have the following definitions:
- (a) **“adverse effect”** an impairment of or damage to the environment, including a negative effect on human health and safety
 - (b) **“alter”** to change or terminate a development or proposal, where the alteration causes or is likely to cause a significant change in the effects of the development or proposal on the environment
 - (c) **“ambient loading standards”** requirements that specify the maximum amount of pollutant(s) a building, work area, or a site may be allowed to have in its surroundings
 - (d) **“assessment”** an evaluation of a proposal to ensure that appropriate environmental management practices are incorporated into all components of the life cycle of a development
 - (e) **“Authority”** or **“Land Authority”** means the executive body that is delegated with the responsibility for OCN Land management pursuant to the OCN *Land Code* and *Land Laws*, as amended from time to time
 - (f) **“Council”** the duly elected Opaskwayak Cree Nation Chief and Council
 - (g) **“development”** any activity that causes or is likely to cause:
 - (i) a significant effect on the environment or will likely lead to a further development, which is likely to have a significant effect on the environment
 - (ii) a significant effect on the social, economic, and environmental health and cultural conditions that influence the lives of people of a community, to the extent that they are caused by environmental effects
 - (iii) the release of any pollutant into the environment
 - (iv) an effect on any unique, rare, or endangered feature of the environment, or
 - (v) the creation of by-products, residual, or waste products not regulated by Opaskwayak toxic substances laws and regulations
 - (vi) the use of any natural resource in such a way as to interfere with the use of that resource for any other purpose, or

- (vii) the use of any natural resource in such a way as to have an adverse impact on another resource, and
- (viii) the use of technology that is concerned with resource utilization and that may induce environmental damage.
- (h) “**director**” the director of the Division appointed by the Land Authority
- (i) “**discharge**” the addition of any pollutant to waters that affect the waters within the Opaskwayak Cree Nation’s jurisdiction
- (j) “**environment**” all plant and animal life, including air, land, and water
- (k) “**Environment Officer**” a person authorized by the Division or Authority to implement the provisions of the Land Laws and includes any delegate or any peace officer
- (l) “**land**” or “**lands**” and “**Opaskwayak Cree Nation lands**” includes soil, earth and terrain including surface and subsurface layers of earth and lands of the Opaskwayak Cree Nation falling within the jurisdiction of the *Opaskwayak Cree Nation Land Code*
- (m) “**Land Laws**” the Opaskwayak Cree Nation Land Code (“Land Code”), and any other law enacted pursuant to Land Code including but not limited to the OCN Land Law for Establishing Land Authority, OCN Land Law For Land Use And Community Plan Including Natural Resources, OCN Land Law For Land Use and Community Plan Including Natural Resources, OCN Zoning Regulation, OCN Spousal Interest Land Law, and all other related laws as enacted or amended from time to time under the First Nations Land Management Act
- (n) “**kestēneta uski**” respect the land
- (o) “**manacheta kituskinaw**” taking care our land
- (p) “**Manager**” is the Lands Manager responsible for the day to day operations, administration and management of lands and resources of to the pursuant to section 4.1(c) of the *OCN Land Law for Establishing Land Authority*.
- (q) “**kitaskīnaw**” our area, our land, where you live, includes everything in that area.

- (r) “**OCN Law**” means any Law, Act, by-law, or regulation over which OCN has legislative authority to enact
- (s) “**ochiniwin**” the *ininiwak* law of consequence that occurs when a sacred law has not been followed. A related concept to *pastahowin*
- (t) “**oneschekāwina**” our sacred laws
- (u) “**pastahowin**” the breaking of a sacred laws and wrongful act against *uski* or creation. See also related concept: *ochiniwin*
- (v) “**person responsible for a pollutant**” is the owner of the pollutant or any other person having management or control of the pollutant
- (w) “**person**” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or any other legal entity
- (x) “**pollutant**” means any dredged soil, solid, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, liquid, gas, smoke, waste, odour, heat, sound, vibration, radiation, or a combination of any of them that is foreign to or in excess of the natural constituents of the environment, and
 - (i) affects the natural, physical, chemical or biological quality of the environment or
 - (ii) is or is likely to be injurious to the health or safety of persons, property, or animal life or
 - (iii) interferes with the comfort, well-being, livelihood or enjoyment of life by a person
- (y) “**pollution assimilative capacity**” refers to the ability of the environment or a portion of the environment (such as a stream, lake, air mass, or soil layer) to carry waste material without adverse effects on the environment or on users of its resources
- (z) “**proponent**” a person who is undertaking, or proposes to undertake, a development on Opaskwayak Cree Nation lands

- (aa) “**release**” includes to spill, discharge, dispose, spray, inject, inoculate, abandon, deposit, pour, empty, throw, place, exhaust, leak, seep or emit
 - (bb) “**waste**” any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate any air, land, or waters of the Opaskwayak Cree Nation.
- (2) For greater certainty, terms shall have the meaning or definitions attributed to them in the *Framework Agreement on First Nation Land Management* and/or the *First Nations Land Management Act*, and/or the *OCN Land Code* and/or the *Individual Transfer Agreement*, except where same conflict with a meaning set out herein.

Section 2.10 The Authority

- (1) This Law creates the Opaskwayak Cree Nation Environmental Division (the “Authority”). The Authority must govern the Division, which must be composed of members of the Opaskwayak Cree Nation. The Division must be the lead Opaskwayak Cree Nation agency to pursue the objectives of the Law to protect the quality of the environment and ecological health of present and future generations of Opaskwayak Ininiwak and to provide the opportunity for all citizens of the Opaskwayak Cree Nation to exercise influence over the quality of their environment.

Section 2.11 Authority is authorized

- (1) Without limiting the generality of the objectives of the Authority, the Authority is authorized to:
- (a) act as lead agency for Opaskwayak Cree Nation water permitting and enforcement, including but not limited to water rights, surface water, and underground water allocation and distribution, planning, contracts, and stream compacts
 - (b) revise the Law and related laws regulating the Opaskwayak Cree Nation environment
 - (c) act as lead agency for all regulatory functions including administrative functions, authorizations, and enforcement under this Law

- (d) seek injunctions against any person in violation of any regulation authorized under this Law in the Courts
- (e) direct investigations which the Authority determines are necessary to ensure compliance with this Law and the regulations
- (f) issue, continue, revoke, amend, modify, condition, renew or refuse to renew permits, licences, certifications, and other authorizations as specific under implementing regulations
- (g) issue, modify or revoke orders requiring actions as the Authority considers necessary to enforce this Law
- (h) delegate any authority to the Manager
- (i) enact rules applicable to activities and persons subject to the jurisdiction of the Opaskwayak Cree Nation, as they may consider appropriate to protect the environmental resources and public health and welfare
- (j) administer and enforce this Law, including the regulations licences and orders made this Law, including the holding of hearings and issuing of orders and directives
- (k) administer and enforce any other laws and regulations as determined by the Council
- (l) develop and implement standards and objectives for environmental quality of the Opaskwayak Cree Nation in consultation with Elders, other Opaskwayak Cree Nation entities, departments, the public and other governments
- (m) establish and maintain an effective method of public involvement and community input in environmental decision making
- (n) utilize any research, reports, monitoring, studies and site investigations related to the acquisition of knowledge, data or technological understanding necessary to perform its mandate
- (o) utilize technical, analytical services, and traditional indigenous knowledge (TIK) systems, and

- (p) develop environmental management strategies and policies for the protection, maintenance, enhancement and restoration of general ecological health quality at Opaskwayak Cree Nation.

Section 2.12 Environmental awareness

- (1) Mandate - for the purpose of carrying out the Authority's mandate related to preserving the quality of the environment, the Manager will issue:
 - (a) environmental quality objectives for pollution prevention or environmental control
 - (b) environmental quality guidelines specifying recommendations to support particular uses of the environment
 - (c) release guidelines recommending limits, including limits expressed as concentrations or quantities, for the release of substances into the environment
 - (d) codes of practice respecting pollution prevention or specifying procedures, practices, or release limits for environmental control relating to works, undertakings and activities during any phase of their development and operation, including the location, design, construction, start-up, closure, dismantling and clean-up phases and any subsequent monitoring activities.
- (2) Scope of objectives - the objectives, guidelines, and codes of practice referred to in subsection (1) may relate to the following:
 - (a) the environment
 - (b) pollution prevention
 - (c) the recycling, conserving, reusing, treating, storing or disposing of substances or reducing the release of substances into the environment
 - (d) activities that affect or may affect the environment
 - (e) the conservation of natural resources and sustainable development, or
 - (f) the *oneschekāwina* and oral traditions of the Opaskwayak *Ininiwak* relating to *uski*.

- (3) Consultation - in carrying out the duties under subsection (1), the Manager may offer to consult with Opaskwayak Elders, governing bodies of the Opaskwayak Cree Nation, members of Opaskwayak Cree Nation, traditional and non-traditional land users, hunters, trappers, gatherers, non-members who reside on Opaskwayak Cree Nation lands, the government of a province, the government of Canada, aboriginal governments, representatives of industry and labour, municipal authorities, or with persons interested in the quality of the environment.
- (4) Authority may act - the Manager may act under subsection (1) if an offer to consult is not accepted or responded to 60 days after the day on which the Manager offers to consult in accordance with subsection (3).

Section 2.13 Publication

- (1) The Authority must publish any objectives, guidelines, or codes of practice issued under this section, or give notice of them in a manner similar to the manner of notice outlined in s. 13.3 of the *Land Code* respecting community meetings, or any other means the Authority regards advisable in the circumstance.
- (2) In order to increase environmental awareness at the Opaskwayak Cree Nation, the Manager may:
 - (a) Prepare and produce informational material respecting the environment of the Opaskwayak Cree Nation and make the material available to the public
 - (b) support and encourage the development of land based educational programs respecting environmental management through grants or other assistance.

Section 2.14 Appointment of a Manager

- (1) The Council shall appoint a Manager for the purposes of this Law and the regulations.

Chapter 3. ENVIRONMENTAL ASSESSMENT, PERMITTING AND LICENCES

Section 3.01 No unauthorized release of pollutant causing significant adverse effect unless specifically authorized

- (1) No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that causes or may cause a significant adverse effect, unless expressly authorized or permitted to do so:
- (a) under this Law or the regulations
 - (b) under another Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament, or a regulation made under one of those Acts, or
 - (c) by a licence, permit, order, instruction, directive or other approval or authorization issued or made under this Law, an Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament.

Section 3.02 Person has duty to report release that may cause or is causing significant adverse effect

- (1) A person who releases or causes or allows the release of a pollutant that may cause, is causing or has caused an adverse effect must report the release, in accordance with the regulations, to:
- (a) the Manager
 - (b) the person responsible for the pollutant, if the person reporting is not the person responsible for the pollutant but he or she knows or is readily able to determine the identity of that person and
 - (c) any other person who the person reporting knows or ought to know may be directly affected by the release.

Section 3.03 No release in excess of limits

- (1) No person shall release or allow the release of a pollutant in an amount or concentration, or at a level or rate of release, that exceeds the limit that is expressly provided under this Act, another Act of the Opaskwayak Cree Nation, an Act of the Legislature of Manitoba, an Act of the Legislature of Saskatchewan, or an Act of Parliament, or in a regulation, licence, permit, order, instruction, directive or other approval or authorization issued or made under one of those Acts.

Section 3.04 Opaskwayak Environmental Review Panel

- (1) The Authority may establish and appoint members to an Environmental Review Panel.
- (2) The composition of an Environmental Review Panel must include community representation as follows:
 - (a) Include at least one member of the current Chief and Council
 - (b) Include at least one member from the Council of Elders
 - (c) Include at least one youth representative from Junior Chief and Council,
 - (d) Include at least one OCN member who is a man and another who is a women separate from and in addition to the representative referred to in subsection 2(a), 2(b) and 2(c) above, and
 - (e) Such further and other Environmental Review Panel members as the Authority sees fit, which may include experts if the Authority deems necessary.
- (3) When requested by the Authority, the Environmental Review Panel must do one or more of the following in accordance with any terms of reference specified by the Authority:
 - (a) provide advice and recommendations to the Authority
 - (b) conduct public meetings or hearings and provide advice and recommendations to the Authority
 - (c) conduct investigations into specific environmental concerns and report back to the Authority
 - (d) act as a mediator between two or more parties to an environmental dispute and report back to the Authority.

- (4) When requesting the Environmental Review Panel to do anything mentioned in subsection (3), the Authority may specify the terms of reference that the Environmental Review Panel is to follow in carrying out its duties.
- (5) The Environmental Review Panel may make rules governing its procedure.

Section 3.05 Developments

(1) Developments

No person may construct, alter, or operate any development unless:

- (a) the person files a written proposal with the Authority and obtains a valid licence from the Manager for the development, or
- (b) the person is exempted under the Law or the regulations from the requirements of clause (a).

Section 3.06 Discretion to Classify Projects

- (1) The Authority has the absolute discretion to classify developments as small, medium, or large projects.

Section 3.07 Discretion to Request Further Information Before Granting a Licence

- (1) After receiving the description of a development proposal from the proponent under section 3.05, the Authority may require the proponent to provide an amended description, environmental assessment, or any other information due to an incomplete or insufficient description before granting a licence.

Section 3.08 Exempt Development

- (1) Where a development is subject to an existing approval process that:
 - (a) involves interested governing bodies of Opaskwayak Cree Nation
 - (b) includes public consultation, and
 - (c) addresses environmental issues.
- (2) The Authority may, by agreement with the Council, exempt that development from this section.

Section 3.09 Community Input

- (1) The Authority must ensure that there is a process for community input to receive comments with respect to a proposed development. The Authority may pass by regulation procedures respecting receiving, compiling and archiving community input for any proposed development.

Section 3.10 Public consultations by proponent

- (1) When considering the proposal, the Manager and the Authority may take into account any public consultations on the proposed development conducted by the proponent.

Section 3.11 Agreements with jurisdictions other than Opaskwayak Cree Nation

- (1) If a proposed development that requires an environmental licence under this Law may have an environmental impact of concern to a jurisdiction other than Opaskwayak Cree Nation, the Authority may, with the approval of Council and subject to the regulations, enter into an agreement with that jurisdiction:
 - (a) to establish a joint assessment process in which members of a panel are jointly appointed by the Authority and other governments who are parties to the agreement, or
 - (b) to provide for the use of that jurisdiction's assessment process for the purpose of gathering the information necessary to make a decision to issue or refuse a licence under this Law.

Section 3.12 Equivalent assessments

- (1) The Authority may not enter into an agreement unless:
 - (a) the Authority is satisfied that the agreement provides for an assessment that is at least equivalent to the assessment that would otherwise be required under this Law, and
 - (b) the agreement provides for:
 - (i) notification of the public in Opaskwayak Cree Nation about the filing of the proposal through the use of the public registry and by way of advertisements in the affected provinces

- (ii) comments from members of the public related, at minimum, to the proposal, the guidelines for the assessment of the proposal, the assessment, and the review of the assessment
- (iii) community input or consultations at Opaskwayak Cree Nation about the proposal by a panel established for the purposes of the assessment process
- (iv) a joint assessment process under Section 3.11(1)
- (v) a requirement that the Authority be satisfied that each proposed member of the panel is unbiased and free of any conflict of interest relative to the proposal and has special knowledge or experience relevant to the anticipated environmental effects of the proposal
- (vi) a program relating to the provision of financial assistance to members of the public participating in the assessment process when in the opinion of the Authority such a program is desirable
- (vii) an opportunity for the Council to require further information before making a decision regarding licensing if, in the opinion of the Council or the Authority, the assessment process has not produced sufficient information on which to base such a decision, and

Section 3.13 Proponent's obligation to pay costs

- (1) The proponent of the development must pay to the Authority any costs that the Authority incurs in relation to an environmental assessment, community meeting, or follow-up monitoring and mitigation measures, which are related to the exercise of the Authority's responsibilities.
- (2) The costs and amounts that the proponent must pay under subsection (a) constitute a debt due to the Opaskwayak Cree Nation and may be recovered as such in any court of competent jurisdiction.

Section 3.14 Participant funding by proponents

- (1) The Authority may, in accordance with the regulations, require a proponent of a development that is subject to an assessment under this Law to provide financial or other assistance to any person or group participating in the assessment process.

Section 3.15 Proponent to notify Manager or Authority of alteration in development

(1) Where a proponent:

- (a) has submitted a proposal for a development in, but is not yet in receipt of an environmental licence or
- (b) has received an environmental licence for a development and the proponent intends to alter that proposal or the development as licensed that does not conform to the terms and conditions or that is likely to change the environmental effect,

the proponent must notify the Manager or the Authority, as the case may be, of the proposed alteration before proceeding with it.

Section 3.16 Dealing with minor proposed alterations

(1) Where the Director or the Authority has received notice of a proposed alteration of a Development and the potential environmental effects resulting from the alteration are insignificant or will be accommodated by the ongoing assessment process. The Manager or the Authority may in writing, and with such terms and conditions as he or she considers advisable, give approval to the proponent to implement the alteration.

Section 3.17 Record of minor alteration decision

- (1) If the Manager or Authority approves a proposed alteration, he or she must file in the public registry:
- (a) a copy of the approval under subsection 3.16 and
 - (b) the name of a contact person in the Authority who can give information to the public about the proposed alteration.

Section 3.18 Dealing with major proposed alterations

(1) Where the Manager or the Authority has received notice of a proposed alteration in accordance with section 3.15, and the proposal is other than as described in section 3.16, the Manager or Authority may direct the proponent to seek approval for the proposed alteration as a proposal in accordance with sections 3.05 or 3.12, as the case may be.

Section 3.19 Decision on proposed alterations

- (1) The decision of the Manager or Authority with respect to the disposition of the alteration must be communicated to the proponent within 21 days from the receipt of the request for the change.

Section 3.20 Prior approval of alteration required

- (1) No person may proceed with an alteration in a development until the person has received approval from the Authority.

Section 3.21 Compliance with limits

- (1) No person may proceed with a development for which that person has received a licence from the Authority, except in accordance with the specifications, limits, terms and conditions set out in the licence.

Section 3.22 Development not to proceed without licence

- (1) No person may proceed with a development for which a licence has been refused by the Authority

Section 3.23 Order deemed to be a licence

- (1) Where prior to the coming into force of this Law, a person received an approval from the Authority under the laws, procedures and acts of the Opaskwayak Cree Nation, it is deemed to be a licence issued under this Law.

Section 3.24 Licence binding on purchase of a development

- (1) An order, licence, or permit issued under this Law or the regulations is also binding on a person who may purchase or otherwise acquire custody or control of the development in the future.

Section 3.25 Development deemed where disagreement

- (1) The Authority, or such other body appointed by council, may decide whether any project, industry, operation or activity, or any alteration or expansion thereof is a development.

Section 3.26 Maintaining registry of developments

- (1) The Authority must maintain a registry for each proposal containing:
 - (a) a summary, prepared by the proponent in form and details as approved by the Authority

- (b) the disposition and status of each proposal
- (c) a copy of the environmental licence, where applicable
- (d) a copy of the assessment report
- (e) justification for not accepting the advice and recommendations of the Environmental Review Panel, where applicable
- (f) justification for refusing to issue an environmental licence, where applicable, and
- (g) such other information as the Authority may from time to time direct.

Section 3.27 Suspension in extraordinary circumstances

- (1) Where a person is in possession of a licence issued under this Law, that person may request the Authority to suspend or vary all or any part of the licence where extraordinary circumstances warrant. The Authority may comply with the request subject to such limits, terms and conditions as the Authority deems necessary and suspend or vary any or all of the licence for a period not exceeding 14 days, as specified by the Authority.

Section 3.28 Suspension of licence and restoration of licence

- (1) Where the Authority is satisfied that adequate steps have been taken by a licensee whose licence was suspended, withdrawn, or cancelled, the Authority must restore the licence to remedy the situation.

Section 3.29 Cancellation or suspension of permits, etc.

- (1) If the Court so orders, any permit or other authorization to which the order relates is cancelled unless the Court makes an order suspending it for any period that the Court considers appropriate.

Section 3.30 Retention

- (1) Information in the registry is to be maintained for a minimum of five years.

Section 3.31 Lands Authority may refuse or suspend permit

- (1) The Land Authority may refuse to issue a permit or other authorization under this Act, or may cancel such a permit or other authorization, if the applicant or the holder has been convicted of an offence under this Act.

Section 3.32 Emergency action

- (1) The Manager or an Environment Officer may take, or cause to be taken, any emergency action that he or she considers necessary to protect the environment if he or she believes that:
 - (a) a pollutant may be released, is being released, or has been released, and
 - (b) the release may cause, is causing or has caused a significant adverse effect on the environment.

Section 3.33 Action by Council to minimize danger

- (1) Notwithstanding anything in this Act, where the Land Department determines it is in the public health of Opaskwayak Cree Nation to take emergency action to alleviate an environmental emergency or where a health emergency as declared by the Council exists, the Lands Department may authorize the taking of such action as is deemed necessary by the Council to mitigate the emergency or alleviate the threat without reference to the normal approval or licencing processes pursuant to this Act.

Section 3.34 No injunction against the Council

- (1) No injunction lies against the Council or the Department to restrain or prevent the Council or any person acting under the authority of the Council, including the Department, the Manager, or an Environment Officer, from taking action.

Chapter 4. ORDERS, VIOLATIONS AND COMPLIANCE

Section 4.01 Environment Officers

- (1) The Authority may designate Environment Officers for the purposes of this Law, or any provision of this Law persons or classes of persons who, in the Authority's opinion, are qualified to be so designated in the administration of a law respecting the protection of the environment in accordance with the traditional protocol(s) of OCN. Environment Officers shall have the powers and authority of an Enforcement Officer in accordance with Chapter III of the *OCN Enforcement Act*.
- (2) The Manager shall have the powers and authority of an Enforcement Officer in accordance with Chapter III of the *OCN Enforcement Act*.

Section 4.02 Order may be issued

(1) If the Authority:

- (a) determines with or without a hearing that there exists a violation of any provision of OCN Law or of any order, permit, or control regulation issued or promulgated under authority of OCN, or**
- (b) believes that:**
 - (i) a pollutant may be released or has been released, and**
 - (ii) the release may cause or has caused an adverse effect on the environment****the Manager may take actions and issue Orders as outlined in subsection 2 below.**

(2) Without limiting the discretion or remedies available, the Manager in accordance with subsection 1 may take any or all of the following actions:

- (a) Directing any person to take any action that the Manager considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence**
- (b) Directing any person to prepare and implement a pollution prevention plan or an environmental emergency plan incorporating the traditional practices of OCN**
- (c) Directing any person to carry out environmental effects monitoring in the manner established by the Authority or directing the person to pay, in the manner prescribed by the Court, an amount for the purposes of environmental effects monitoring**
- (d) Directing any person to implement an environmental management system that meets a recognized Canadian, international or traditional OCN standard**
- (e) Directing any person to have an environmental audit conducted by a person of a class and at the times specified by the Manager and directing the person to remedy any deficiencies revealed during the audit**
- (f) Directing the person to pay, in the manner prescribed by the Manager, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring**

- (g) issue orders to any person to clean up any material which he, or his employee, or his agent has accidentally or purposely dumped, spilled or otherwise deposited in or near water resources which may pollute them
- (h) issue a cease and desist order, which shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated
- (i) Issue an Environmental Protection Order in accordance with section 4.03 below,
- (j) Directing any person to pay to Opaskwayak Cree Nation an amount of money that the Manager considers appropriate for the purpose of promoting the conservation or protection of the environment
- (k) Directing the person to pay, in the manner prescribed by the Manager, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed
- (l) Directing the person to pay, in the manner prescribed by the Manager, an amount to the local educational institution including for scholarships for students enrolled in studies related to the environment
- (m) Requiring the person to comply with any other conditions that the Manager considers appropriate in the circumstances for securing the person's good conduct and for deterring the offender and any other person from committing offences under this Law
- (n) Any other Order or actions the Manager deems necessary in the circumstances.

Section 4.03 Protection order may be issued

- (1) An environmental protection order may require the person named in the order – by a deadline set out in the order – to take any steps that the Manager considers necessary to protect the environment, including one or more of the following:
 - (a) Investigate the situation
 - (b) Measure the rate of release or the ambient concentration, or both, of the pollutant

- (c) Take any action specified by the Authority to prevent or reduce the release of the pollutant
- (d) Minimize or remedy the effects of the pollutant on the environment
- (e) Restore the area affected by the release of the pollutant to a condition satisfactory to the Authority, taking into consideration the oral traditions and traditional land users affected.
- (f) Monitor measure, contain, remove, store, destroy or otherwise dispose of the pollutant, or reduce or prevent further releases of the pollutant
- (g) Install, replace or alter any equipment or thing in order to control or eliminate the release of the pollutant
- (h) Report on any matter ordered to be done, in accordance with directions set out in the order.

Section 4.04 Consequences for failing to comply

- (1) If a person fails to comply with any directions or orders made in accordance with sections 4.02 or 4.03 above, the Manager or an environment officer may, without further notice to the person
 - (a) carry out the measures specified in the order, or cause them to be carried out, and
 - (b) be accompanied by any other persons, and use any equipment, required to carry out the measures specified in the order.

Section 4.05 Variation, etc. of order

- (1) The Authority may, by order, vary, extend, suspend or terminate an order.

Section 4.06 Authority must immediately communicate order to residents

- (1) Immediately after making an order, the Authority shall cause details of the order to be communicated by the most appropriate means to the residents and land users of the affected area of Opaskwayak Cree Nation.

Chapter 5. Appeals

Section 5.01 Written appeal within 30 days to the Manager

- (1) Except as may be otherwise provided in this Act, any person who is affected by any order, instruction, or permit of an Environment Officer may, within 30 days from the date of issuance of the order, instruction or permit, appeal to the Manager in writing.

Section 5.02 Manager to decide within 30 days

- (1) Where an appeal is made to the Manager, the Manager must within 30 days after the receipt of the appeal affirm, rescind, or amend the decision being appealed and notify the appellant of the disposition of the appeal within seven days from the date of the decision.

Section 5.03 Appeal to the Lands Department from decision of Manager

- (1) Except as may be otherwise provided in this Law, any person who is affected by:
 - (a) the issuance of a licence or a permit by the Manager or
 - (b) the refusal by the Manager to issue a licence or permit or
 - (c) any decision, order, instruction, or directive of the Manager or
 - (d) the imposition of limits, term and conditions in a licence or permit issued by the Manager;

May file an appeal in writing with the Authority that includes the reasons for the appeal and relevant facts within the following periods:

- (i) In the case of a decision, issuance, refusal, order, instruction, or directive or the imposition of limits, terms and conditions or the disposition of the appeal, within 30 days of the date of the decision
- (ii) In the case of a licence that sets out a limit, term, or condition that is to take effect on or be imposed at a future date and specifies that an appeal is to be taken within a specified period, within the period so specified.

Section 5.04 Disposition of appeal by the Department and notice period

- (1) Where an appeal is made to the Lands Authority, the Council may:
 - (a) in the case of an appeal of the Manager's decision not to recommend a public meeting or hearing on a proposal, request the Environmental Review Panel to hold a public meeting or hearing on the proposal
 - (b) refer the matter back to the Manager for reconsideration

(c) make any decision that in his or her opinion ought to have been made by the Manager, or

(d) quash or vary the decision under appeal, or dismiss the appeal.

Section 5.05 Appeals of Lands Authority decision

(1) A person who is affected by a decision of the Authority may file an appeal in writing with the Council. The appeal must be set out the reasons for the appeal and must be filed within 30 days after the date of the decision of the Authority.

Section 5.06 Council may reopen appeal with new evidence

(1) In the event that the appellant has new evidence that was not previously considered, the Council may reopen the appeal process and consider the new evidence with respect to the disposition of the appeal.

Section 5.07 Appeal is not a stay

(1) An appeal filed does not suspend the decision appealed against, but the Council may suspend the operation of the decision, in whole or in part, until the appeal is disposed of.

Section 5.08 Appeal process

(1) The Council shall hear an appeal from a decision of the Authority within 30 days of filing of the notice of appeal and shall deliver its decision within 10 days of the hearing of the appeal. The Council shall not be bound by any rules of evidence. The decision of the Council shall be final and binding. Any appeal to a Court of Law shall be founded in law and not in fact.

Chapter 6. Offence Provisions

Section 6.01 Offence

(1) Any person who contravenes or violates any provision of this Law or the regulations or fails to comply with any provision of any order, licence, permit or order issued by the Authority, the Manager, or an Environment Officer made pursuant to this Law or the regulations, is guilty of an offence.

Section 6.02 Separate offence for each day that contravention occurs

- (1) Where a violation of any provision of this Act or the regulations occurs, the offender is guilty of a separate offence for each day that the violation continues.
- (2) Where a failure to comply with an order, licence, permit, approval or instruction of the Authority, the Manager or an Environment Officer, or an order of a judge made for more than one day, the offender is guilty of a separate offence for each day that the contravention, violation or failure continues.

Section 6.03 Other penalties

- (1) A judge may, in addition to a fine or other penalty, require the convicted person to do any or all of the following things:
 - (a) to refrain from committing any further offence under this Law, or from causing further environmental damage
 - (b) to clean or restore the environment from damage caused by the offence
 - (c) to pay damages or make restitution to any person who suffered damages by the offence as the judge considers appropriate
 - (d) to pay an additional fine in an amount no greater than the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence, despite any maximum fine provided elsewhere.

Section 6.04 No person shall obstruct

- (1) No person may obstruct or attempt to obstruct an Environment Officer, Manager or any other person in the performance of their duties or the exercise of their authority under this Law or any regulation under this Law

Chapter 7. Liability & Immunities

Section 7.01 Immunity

- (1) No action for damages may be brought against present or past Opaskwayak Cree Nation Council, Law Enforcement Officer, members, employees, or agents for:
 - (a) any statement, action, or omission of that person in the performance of that person's duty, or

(b) any alleged neglect or default of that person in the performance of that person's duty.

(2) Subsection (1) does not provide a defence if an Opaskwayak Cree Nation:

(a) Council member, Enforcement Officer, Environment Officer, member, employee, or agents has, in relation to the conduct that is the subject matter of the action, been found guilty of dishonesty, gross negligence, malicious or wilful misconduct, or

(b) the cause of action is libel or slander.

Section 7.02 Liability of Opaskwayak Cree Nation Chief and Council and Employees

(1) Present or past Opaskwayak Cree Nation Council, members, employees, or agents are not liable for any damages or other loss sustained by any person, or to the property of any person, as a result of neglect or failure to discover or detect any contravention of this Law or any other Opaskwayak Cree Nation Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Opaskwayak Cree Nation Law.

Section 7.03 Actions against Opaskwayak Cree Nation

(1) All actions against Opaskwayak Cree Nation for the unlawful doing of anything that:

(a) is purported to have been done by the Opaskwayak Cree Nation under the powers conferred by this Law or any Opaskwayak Cree Nation law, and

(b) might have been lawfully done by the Opaskwayak Cree Nation, if acting in the manner established by law.

(2) Actions must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

Section 7.04 Damages

(1) Opaskwayak Cree Nation is in no case liable for damages, unless notice in writing setting out the time, place, and manner in which the damage was sustained, is delivered to the Opaskwayak Cree Nation within two (2) months from the date on which the damage was sustained.

- (2) In case of the death of a person injured, the failure to give notice or its insufficiency is not a bar to the maintenance of the action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:
- (a) there was a reasonable excuse, and
 - (b) Opaskwayak Cree Nation has not been prejudiced in its defence by the failure or insufficiency

Chapter 8. Regulatory Powers

Section 8.01 Regulations may be passed by Council

- (1) For the purpose of carrying out the provisions of this Law, Council may make regulations, guidelines, procedures, and orders that:
- (a) set out environmental management practices that are consistent with the *oneschekāwina* of OCN to be incorporated into the design, construction, operation, closure or rehabilitation of a development
 - (b) promote whether it be the means of harvesting, gathering, hunting, fishing, trapping or any traditional land use practice which promotes and enriches the culture and livelihood of the *Ininiwak*
 - (c) classify small, medium, or large developments and set out assessment processes, guidelines, and procedures
 - (d) classify certain geographic areas of the Opaskwayak Cree Nation by pollution assimilative capacity and set ambient loading standards for those areas
 - (e) set out policies for environmental management, as they relate to economic development, conflicting land or resource use, OCN Zoning by-laws, and industrial density
 - (f) limit the number and types of developments that may cause adverse cumulative effects that may be permitted to be constructed on OCN Land
 - (g) govern or prohibit any use, activity, or thing that may cause adverse effects
 - (h) govern or prohibit the construction, alteration, modification, or expansion of developments

- (i) set environmental quality objectives, the process for setting of those objectives, and the use of those objectives
- (j) exempt developments from the requirements of this or any other Law
- (k) set out the procedures to be followed with regard to licences or permits required under the Law or the regulations
- (l) set service fees payable for the disposition or administration of licences or permits
- (m) set the requirement of evidence of financial responsibility in the form of insurance, indemnity bond, or other guarantee for persons owning or operating developments that will or may cause environmental damage
- (n) reduce the adverse effects of the design, location, construction, alteration, and operation of developments
- (o) reduce pollution or other environmental damage of the design, construction, alteration, operation, and installation of systems, processes, or works including but not limited to waste disposal grounds, landfills, sewage collection and treatment, sewage or industrial sludge handling and disposal, incinerators, and recycling systems
- (p) set standards for the methods of collection, treatment, distribution, and disposal of pollutants
- (q) specify the location of waste disposal grounds and landfills, the construction and placement of structures on land located within such distance of waste disposal grounds and landfills as is specified in the regulation, whether or not the waste disposal grounds and landfills are abandoned or not
- (r) limit or prohibit the release of pollutants
- (s) the type, quantity, or conditions respecting resource utilization from any development
- (t) control the release of pollutants resulting from the burning of vegetation or the remains of vegetation in connection with agricultural activities
- (u) restrict or prohibit the use of any product or substance that may pollute or damage the environment

- (v) respecting the disposal, reuse, or recycling of any product or residual flow or packaging offered for sale in the province, which may become a component of a waste stream
- (w) require certain developments to register with the Authority
- (x) require a permit for the construction or operation of certain developments, and the issuance or withdrawal of the permits by the Director or Environment Officer and the limits, terms and conditions to be included in the permits issued by the Director or the Environment Officer
- (y) set the methods of testing samples and prescribing the equipment, apparatus, or structures to be used for taking samples
- (z) respecting livestock production operations
- (aa) declare equivalent standards or status
- (bb) prohibit litter and regulate the disposal of litter
- (cc) control the use, storage, handling, and disposal of pesticides and containers
- (dd) control the use, storage, handling, and disposal of petroleum products, including oil
- (ee) prescribe the forms for use under this Law
- (ff) prescribe the manner of giving notice of any decision or matter under this Law
- (gg) set the amount, terms, and conditions for grants and the applications for grants
- (hh) prescribe the information that must be contained in a description of a designated project
- (ii) set the procedures, requirements and time periods relating to environmental assessments, including the manner of designing a follow-up program
- (jj) include the identification of records or information to be posted on the Registry Internet site and the establishment and maintenance of project files referred to in section 3.26
- (kk) charge fees for providing copies of documents contained in the Registry

Chapter 9. AMENDMENTS

Section 9.01 Amending Process

- (1) This Law may be amended by Chief and Council in the following manner:
 - (a) a recommendation from the Land Authority, supporting or requesting the amendment
 - (b) where the proposed amendment is substantial in nature, it may be referred to a community meeting for input
 - (c) where an amendment is technical in nature or where urgent or following community input may be enacted by a written Resolution of Chief and Council
 - (d) a written Resolution of Chief and Council amending this Law shall be filed with the Land Authority Registry.

Section 9.02 Notice of Amendment

- (1) A notice of amendments shall be publicly posted and such reasonable efforts as the Land Authority deems necessary will be undertaken to provide notice to individuals off reserve.