



Solid Waste Management under the Framework Agreement

Presented by
Andrew Beynon
Jennifer Predie



Solid Waste Management under the Framework Agreement

- Protection of Reserve Lands and Water
 - Self Government
 - Environmental Governance
 - Environmental Management Plans
- Scope of Law-Making and Management Authority under FA
 - Law-Making under the Framework Agreement
 - Why Develop a Solid Waste Management Law?
 - Developing a Solid Waste Management Law



Self Government

- Self Government derives from First Nation history and traditions and is not granted by, nor created by, federal or provincial governments
- The Framework Agreement is a government to government agreement through which the federal government recognizes self government authority, including law making powers over reserve lands, natural resources and the environment
- Federal government recognition of this self government over reserve lands sends an important signal to other governments, businesses, non member residents, courts, police forces etc...Parliament backs this exercise of self government power
- The *Indian Act* land system has failed in part because there no enforcement of *Indian Act* by-laws and regulations
- Additionally, there is little to no enforcement of federal environmental management and protection laws on reserve, and provincial laws do not apply
- The Framework Agreement provides options for building more effective environmental management and enforcement systems on an ongoing basis as an exercise of self government authority

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 is an important initial step in the environmental governance/Environmental Protection Regime that is enabled by the *Framework Agreement*.



Environmental Management Plans (EMPs)



An EMP:

- defines a First Nation's approach to environmental governance.
- identifies environmental issues on a First Nation's land, and proposes 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.
- outlines the laws, policies, and procedures a First Nation wants to pass, and sets a timeline and workplan for their development.
- communicates the First Nation's environmental priorities and directions to staff, community members, other governments, businesses and institutions.



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 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.

Scope of Law-Making and Management Authority under the Framework Agreement

- There are several sections in the Framework Agreement that deal with law making and environmental management authority.
- Recent amendments to the Framework Agreement have expanded upon the list of example laws a First Nation may consider developing.
- The Framework Agreement also includes sections dealing with enforcement of First Nation laws.
 - Establishing offences punishable on summary conviction (Criminal Code)
 - Fines, imprisonment, restitution, community service and alternative means for achieving compliance
 - Enforcement procedures
 - Appointment of a Justice of the Peace, court of competent jurisdiction and prosecutions
 - Compliance and enforcement considerations will be discussed in more detail tomorrow.
- First Nation Laws must be enacted in accordance with the law-making and community consultation sections included in your Land Code

Law-Making Authority under the Framework Agreement – General



PART IV FIRST NATION LAW MAKING

18. LAW MAKING POWERS

18.1 The council of a First Nation with a land code in force will have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

19. ENFORCEMENT OF FIRST NATION LAWS

19.1 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 alternative means for achieving compliance;
- (c) establish comprehensive enforcement procedures consistent with federal, provincial or territorial law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and
- (d) provide for the collection of nontax debts, fees or charges owed to the First Nation using taxation collection remedies made under First Nation taxation laws.

Law-Making Authority under the Framework Agreement - Environment



PART V ENVIRONMENT

23. GENERAL PRINCIPLES

- 23.1 The council of a First Nation with a land code in force will have the power to make environmental laws relating to First Nation land.
- 23.1.1 The following examples illustrate some of the First Nation environmental laws relating to First Nation land contemplated by the Parties:
- (a) laws relating to contaminants on First Nation lands;
 - (b) environmental protection requirements, including requirements in respect of natural resources, soils, water and ground water;
 - (c) environmental emergencies and natural disasters;
 - (d) conservation and heritage management requirements;
 - (e) nuisances, including noise, odours and vibrations;
 - (f) recycling, solid waste management and garbage disposal;
 - (g) unsightly premises;
 - (h) sewage and effluent discharges; and
 - (i) implementation of any provisions of a First Nation environmental management plan.

Why Develop a Solid Waste Management Law?



First Nations operating under their Land Code have the power to create and enact land laws in accordance with the law-making powers and procedures set out in their Land Code. They also retain the power to create and enact by-laws under the *Indian Act*.

- The Indian Reserve Waste Disposal Regulations (IRWDR) govern planning, development and permitting of waste disposal on reserve lands
 - Covers the field
 - Attempts by First Nations to create Section 81 by-laws that go beyond the IRDWR haven't been supported by ISC.
 - Maximum penalty for a violation: \$100 fine, 3 months imprisonment, or both
 - Additionally, there have been no prosecutions for illegal dumping on reserve lands under the IRWDR
- Section 21.1(h) of the Framework Agreement
 - states that First Nations will not be subject to regulations made under sections 42 and 73 of the *Indian Act* to the extent that they are inconsistent with the Land Code or laws of the First Nation.

Therefore, until the First Nation develops a law under their Land Code dealing with solid waste, the IRWDR will continue to (ineffectively) apply.

Developing a Solid Waste Management Law

If a First Nation determines that developing a solid waste management law under their Land Code is a necessary/appropriate option, they may want to consider the following:



Developing a Solid Waste Management Law



Example Responses: **Current Practices and Issues**

Area serviced	<ul style="list-style-type: none"> • Number of households • Number of businesses • Industries 	<ul style="list-style-type: none"> • Total reserve area
Waste Streams/Solid Waste Characterization	<ul style="list-style-type: none"> • household wastes • Recycling • hazardous wastes 	<ul style="list-style-type: none"> • industrial and construction wastes • bulky items, and • approximate volume of each
Waste Collection/Drop-off	<ul style="list-style-type: none"> • Curbside pick-up • Materials collected/waste sorting • Drop off at central location or transfer station 	<ul style="list-style-type: none"> • Composting • Special wastes • Agreements with neighboring municipalities
Disposal Methods	<ul style="list-style-type: none"> • community landfill • Transfer station • Recycling 	<ul style="list-style-type: none"> • Closure of old landfills • Composting • pests
Other Solid Waste Management Concerns on Reserve	<ul style="list-style-type: none"> • Illegal dumping • Lifespan of existing SWM infrastructure • Improperly designed landfill 	<ul style="list-style-type: none"> • Curbside pick-up • User fees
Future Solid Waste Management Initiatives	<ul style="list-style-type: none"> • New landfill site or waste transfer station • New or increased recycling initiatives • Agreements with neighboring municipalities 	

Developing a Solid Waste Management Law

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.

Developing a Solid Waste Management Law

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.
- 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 Responses: **Penalties**

Tickets

- for what activities can a ticket be issued
- what are the fines associated with the tickets
- timeframe for payment, how to dispute a ticket, etc.
- 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

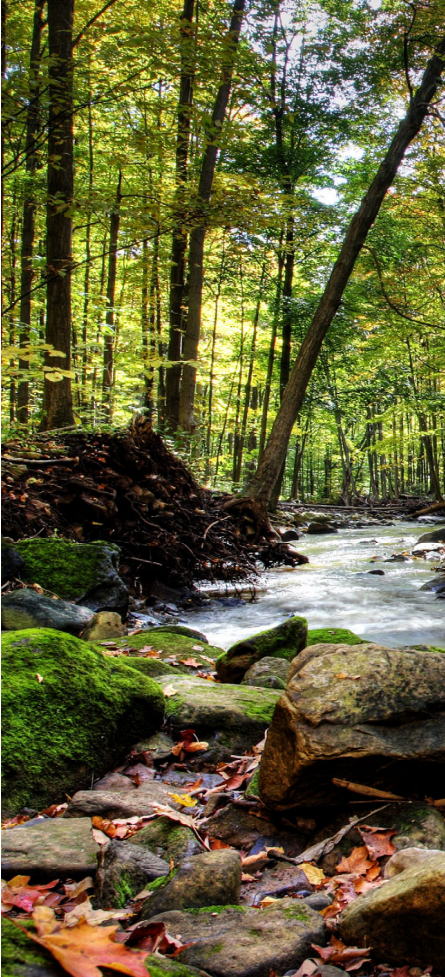
- additional or increasing fines, charges, imprisonment for each day an offence continues

In Summary

- The Framework Agreement provides options for building more effective environmental management and enforcement systems as an exercise of self government authority
- First Nations operating under Land Code now have the ability to develop better plans and systems to protect reserve lands and waters than were previously available under the *Indian Act*.
- Solid Waste is an area of increasing concern that could benefit greatly from proper management
- Developing a solid waste management law under a Land Code may be beneficial to First Nations
- First Nations will need to consider their existing conditions, goals, and internal capacity when developing a solid waste management law
- The best way to ensure compliance with a solid waste management law is to involve the community:
 - Engage the community during law development
 - Educate the community on the content of the law
 - Remove existing barriers to compliance
 - Provide programs to encourage compliance
- The RC recommends that all laws be reviewed by the First Nation's independent legal advisor before enactment

Questions & Discussion





**FIRST NATIONS
LAND MANAGEMENT
RESOURCE CENTRE**

THANK YOU!

For more information, please visit:

www.labrc.com

