

SKOWKALE FIRST NATION

ENVIRONMENTAL PROTECTION LAW

NOVEMBER, 2017

Consolidated to include amendments made by Council Resolution



**SYUWÁ:LELH - Stó:lō Laws**

***“S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat”***

***This is Our Land, we have to take care of everything that belongs to us***

***“Xaxastexw te mekw’stam”***

***Respect all Things***

***“Ewe chexw qelqelit te mekw’stam loy qw’ esli hokwex yexw lamexw ku:t”***

***Don’t waste, ruin or destroy everything; only take what you need***

***“T’xwelátse”***

***Do things in a good way; respect each other***

**WHEREAS:**

- A. Skowkale First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B. Skowkale First Nation had traditional laws and mechanisms to ensure the responsible and sustainable use of lands within Skowkale First Nation’s traditional territory;
- C. Skowkale First Nation has taken over control and management of Skowkale Lands pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Skowkale First Nation Land Code* effective the 1st day of May, 2014;
- D. Under Part 3 of the *Skowkale First Nation Land Code*, the Skowkale First Nation Council is authorized to pass various laws including laws relating to the protection, management and regulation of Skowkale Lands, including environmental protection, and the use and storage of hazardous materials and substances;
- E. Under section 21(2) of the *First Nations Land Management Act* (Canada), the standards of environmental protection established by First Nation laws and the punishments imposed for failure to meet those standards must be at least equivalent in their effect to

any standards established and punishments imposed by the laws of the province in which the First Nation's land is situated;

- F. Skowkale First Nation is concerned about the introduction and continued presence of waste on Skowkale Lands, including historic and ongoing contamination on Skowkale Lands;
- G. Council wishes to establish a framework to regulate the introduction of waste on Skowkale Lands, implement measures to safeguard against environmental emergencies on Skowkale Lands, and manage and remediate contaminated sites on Skowkale Lands; and
- H. It is Council's intention that this Law apply retroactively.

**NOW THEREFORE this *Skowkale First Nation Environmental Protection Law* is hereby enacted at a duly convened Council meeting as a Law of the Skowkale First Nation.**

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## PART 1 - INTRODUCTORY PROVISIONS

### Short title

1. This Law may be cited as the *Skowkale Environmental Protection Law*.

### Application

2. This Law applies to the whole area of Skowkale Lands as defined in the Land Code.

### Definitions

3. (1) In this Law,

**“Certificate of Compliance”** means a certificate of compliance under section 35;

**“Contaminated Site”** means an area of Skowkale Lands in which the soil or any groundwater lying beneath it, or the Water or the underlying sediment, contains a Substance in quantities or concentrations exceeding risk based or numerical criteria, standards or conditions provided in the *Contaminated Sites Regulation*;

**“Contaminated Sites Regulation”** means the *Contaminated Sites Regulation* (British Columbia);

**“Contamination”** means the presence in the soil or any groundwater lying beneath it, or the Water or the underlying sediment, of a Substance in quantities or concentrations exceeding risk based or numerical criteria, standards or conditions prescribed for the purposes of the definition of “Contaminated Site”;

**“Discharge”** includes any introducing, pumping, pouring, throwing, dumping, emitting, burning, spraying, spreading, leaking, leaching, spilling or escaping;

**“Effluent”** means a Substance that is Discharged into the Environment and that

- (a) injures or is capable of injuring the health or safety of a person,
- (b) injures or is capable of injuring property or any life form,
- (c) interferes with or is capable of interfering with visibility,
- (d) interferes with or is capable of interfering with the normal conduct of business,
- (e) causes or is capable of causing material physical discomfort to a person, or
- (f) damages or is capable of damaging the Environment;

**“Environment”** means, in relation to Skowkale Lands, the components of the earth and includes air, land and water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems of the referenced components;

**“Environmental Management Act”** means the *Environmental Management Act* (British Columbia);

**“Hazardous Waste”** has the meaning as prescribed in the *Hazardous Waste Regulation* and includes any Substance prescribed by Council;

**“Hazardous Waste Regulation”** means the *Hazardous Waste Regulation* (British Columbia);

**“Inspector”** means a person appointed under section 43 and includes the Lands Governance Director;

**“Land Code”** means the Skowkale First Nation Land Code;

**“Minor Contributor”** means a Responsible Person determined under section 34 to be a minor contributor;

**“Operator”** means, subject to subsection (3), a Person who is or was in control of or responsible for any operation located at a Contaminated Site, but does not include a secured creditor unless the secured creditor is described in section 26(4);

**“Orphan Site”** means a Contaminated Site determine to be an orphan site under section 37;

**“Owner”** means a person who has an Interest or any other legal or equitable interest in the applicable parcel or unit of Skowkale Lands, but does not include a secured creditor unless the secured creditor is described in section 26(4);

**“Permit”** means a permit issued under section 10;

**“Permittee”** means the holder of a Permit;

**“Person”** includes any director, officer, employee or agent of a person;

**“Pollution”** means the presence in the Environment of Substances or contaminants that substantially alter or impair the usefulness of the Environment;

**“Public Place”** means

(a) a place that is open to the air, including a covered place that is open to the air on at least one side, and to which the public is entitled or permitted to have access without payment, and

(b) a park or public campground;

**“Remediation Order”** means a remediation order under section 33;

**“Responsible Person”** means a responsible Person under section 30;

**“Site Investigation”** means a site investigation under section 27;

**“Site Profile”** means a site profile under section 26;

**“Site Registry”** means the site registry under section 29;

**“Substance”** means any solid, liquid, gas, odour or organism or combination of any of them;

**“Waste”** includes

- (a) air contaminants,
- (b) litter,
- (c) Effluent,
- (d) Hazardous Waste,
- (e) refuse, including discarded or abandoned materials, Substances or objects, including fishing gear, household objects, etc.,
- (f) remains and carcasses of fish and animals, and
- (g) any other Substance prescribed by Council, or, if Council prescribes circumstances in which a Substance is a Waste, a Substance that is present in those circumstances,

whether or not the type of Waste referred to in paragraphs (a) to (f) or prescribed under paragraph (g) has any commercial value or is capable of being used for a beneficial purpose;

**“Water”** includes groundwater and ice;

**“Works”** means any structure, facility, system, device, machinery, equipment, land or process that is used to measure, handle, control, transport, store, treat, destroy, monitor or otherwise manage Waste.

- (2) Unless specifically provided otherwise in this Law, the terms used have the same meaning as defined in the Land Code.
- (3) The Skowkale First Nation government is not an Operator or a Responsible Person only as a result of
  - (a) exercising regulatory authority in relation to a Contaminated Site,
  - (b) carrying out remediation of a Contaminated Site, or
  - (c) providing advice or information in relation to a Contaminated Site or an activity that took place on the Contaminated Site.

### **Binding on Skowkale First Nation Government**



4. For certainty, this Law and any regulations made under this Law bind the Skowkale First Nation government.

### **Delegation**

5. Council may authorize the Lands Governance Director by Council Resolution to assign the performance of any duties of the Lands Governance Director under this Law to any Skowkale First Nation officer, employee, contractor or agent or to any municipal or provincial official.

### **Paramountcy**

6. If there is any inconsistency or conflict between this Law and the Land Code, the Land Code prevails to the extent of the inconsistency or conflict.

## **PART 2 - PROHIBITIONS**

### **Discharge of Waste**

7. (1) Subject to subsection (4), a Person must not Discharge or cause or allow Waste to be Discharged into the Environment in the course of conducting an industry, trade or business that includes the operation of facilities or vehicles for the collection, storage, treatment, handling, transportation, destruction, discharge or other disposal of Waste in relation to the operation.
- (2) Subject to subsection (4), a person must not Discharge or cause or allow Waste to be Discharged into the Environment that is produced by an industry, trade or business that includes the operation of facilities or vehicles for the collection, storage, treatment, handling, transportation, discharge, destruction or other disposal of Waste in relation to the operation.
- (3) Subject to subsection (4), a Person must not Discharge or cause or allow Waste to be Discharged into the Environment in such a manner or quantity as to cause Pollution.
- (4) Nothing in this section prohibits any of the following, provided all are in compliance with applicable federal, provincial and Skowkale laws:
  - (a) the disposition of Waste in compliance with this Law and with all of the following that are required or apply in relation to the disposition:
    - (i) a valid and subsisting Permit;
    - (ii) a valid and subsisting order issued under this Law;
    - (iii) a regulation made under this Law;
  - (b) without restricting the interpretation of paragraph (a)(i), the Discharge into the air of Hazardous Waste from an incinerator or other emission source operated under an authority of Council, the federal or provincial government;
  - (c) the disposition of human remains in accordance with provincial law;

- (d) the burning of leaves, wood shavings, foliage, weeds, crops or stubble for domestic or agricultural purposes;
- (e) the use of pesticides or biocides for agricultural, domestic or forestry purposes in compliance with an Skowkale First Nation law, federal law or provincial law governing their use;
- (f) fires set or controlled by a person
  - (i) carrying out fire control under section 9 of the *Wildfire Act* (British Columbia), or
  - (ii) if the fires are resource management open fires under the *Wildfire Act* (British Columbia), and are lit, fuelled or used in accordance with that Act;
- (g) emissions from steam powered or internal combustion engines in compliance, if applicable, with the *Motor Vehicle Act* (British Columbia);
- (h) emission into the air of soil particles or grit in the course of agriculture or horticulture;
- (i) emission into the air of soil particles or grit in the course of road construction or maintenance;
- (j) emission of an air-borne Hazardous Waste from combustion of wood or fossil fuels used solely for the purpose of comfort heating of domestic, institutional or commercial buildings;
- (k) emission of an air-borne Hazardous Waste from food preparation in
  - (i) residential premises, which includes hospitals, clinics, logging camps, factory and office canteens and other similar premises, or
  - (ii) retail food outlets, which include restaurants, hotels, motels and similar premises, and premises in which food is prepared and sold by retail sale, such as exclusively retail bakeries, and premises selling takeout food.
- (5) Nothing in subsection (4)(b) or (4)(k) authorizes the use of an incinerator or domestic, institutional or commercial heating equipment for the purpose of destroying Hazardous Waste by means of combustion.
- (6) With respect to litter, the prohibition set out at subsection (3)
  - (a) only applies to throwing down, dropping or otherwise depositing litter in a Public Place; and
  - (b) does not apply if depositing and leaving litter was authorized by an Skowkale First Nation law, or, was done with the consent of the Owner, occupier or other person or authority having control of the Public Place.
- (7) In a prosecution, the burden of establishing that subsection (6)(b) applies is on the defendant.

### **Exception Does Not Apply**

8. The exceptions set out in section 7(4) to the prohibitions set out in sections 7(1), 7(2) and 7(3) do not apply where a Person Discharges Waste that an Inspector has reasonable grounds to believe is not usually associated with a Discharge from the excepted activity.

### **Discharge of Waste from Recreational Vehicles and Boats**

9. A person must not Discharge domestic sewage or other Waste from a trailer, camper, transportable housing unit, boat or house boat except
- (a) in accordance with a Permit, a regulation made under this Law, or an order issued under this Law; or
  - (b) if disposal facilities are provided, in accordance with proper and accepted methods of disposal using those facilities, and in accordance with the *Public Health Act* (British Columbia).

### **Issuing Permits**

10. (1) Subject to subsection (2), the Lands Governance Director may issue a Permit authorizing the Discharge of Waste into the Environment subject to requirements for the protection of the Environment that the Lands Governance Director considers advisable and, without limiting that power, may do one or more of the following in the Permit:
- (a) require the Permittee to handle, treat, transport, store, Discharge, monitor and analyze Waste sought to be Discharged into the Environment in accordance with best practices that, at a minimum, comply with the principles and standards provided under the Contaminated Sites Regulation and the Hazardous Waste Regulation;
  - (b) require the Permittee to construct, repair, alter, remove, or improve Works, and to submit plans and specifications for Works specified in the Permit;
  - (c) require the Permittee to
    - (i) provide security, or
    - (ii) post a bond,in the amount and form and subject to conditions the Lands Governance Director specifies;
  - (d) require the Permittee to obtain and provide proof of insurance coverage in an amount and subject to conditions the Lands Governance Director specifies;
  - (e) require the Permittee to provide an indemnification subject to the terms or conditions the Lands Governance Director specifies;
  - (f) require the Permittee to conduct studies and to report information specified by the Lands Governance Director in the manner specified by the Lands Governance Director;

- (g) require the Permittee to recycle certain Waste, and to recover certain reusable resources, including energy potential from Waste.
- (2) Subject to subsection (3), a Permit does not authorize the introduction of Waste into the Environment unless it specifies
  - (a) the characteristics and quantity of Waste that may be introduced; and
  - (b) the term of the Permit.
- (3) The term of a Permit must not exceed 12 months, unless otherwise authorized by a regulation made under this Law, or an order issued under this Law.

### **Amendment of Permits**

- 11. (1) Subject to any regulations made under this Law, or any applicable order issued under this Law, the Lands Governance Director may, for the protection of the Environment, amend the requirements of a Permit
  - (a) on the Lands Governance Directors' own initiative if he or she considers it necessary; or
  - (b) on application by a Permittee.
- (2) The Lands Governance Director may change or impose any procedure or requirement that was imposed or could have been imposed under a Permit.
- (3) If the Lands Governance Director amends a Permit, the Lands Governance Director
  - (a) may require that the Permittee supply the Lands Governance Director with plans, specifications and other information the Lands Governance Director requests; and
  - (b) must deliver notice of the amendment to the Permittee in accordance with section 60.
- (4) Despite subsection (3), the Lands Governance Director may give notice of an amended Permit by electronic means to an address provided by the Permittee.

### **Transfers of Permits**

- 12. (1) A transfer of a Permit is without effect unless the Lands Governance Director has consented in writing to the transfer.
- (2) Despite subsection (1), the Lands Governance Director may consent to a transfer by electronic means to an address provided by the Permittee.

### **Suspension or Cancellation of Permits**

- 13. (1) Subject to this section, the Lands Governance Director, by notice delivered to a Permittee in accordance with section 60, may

- (a) suspend the Permit for any period of time; or
  - (b) cancel the Permit.
- (2) A notice delivered under subsection (1) must state the time at which the suspension or cancellation takes effect.
- (3) The Lands Governance Director may exercise the authority under subsection (1) in any of the following circumstances:
- (a) a Permittee
    - (i) fails to complete construction of Works specified in the Permit within the time specified in the Permit or, if no time is specified in the Permit, within one year after issuance of the Permit, or
    - (ii) does not exercise any rights under the Permit for a period of one year;
  - (b) a Permittee fails to pay fees, charges, taxes or penalties owing to the Skowkale First Nation under the Permit;
  - (c) a Permittee fails to comply with the terms of the Permit;
  - (d) a Permittee fails to comply with an applicable order issued under this Law;
  - (e) a Permittee or the Permittee's agent has made or makes a material misstatement or misrepresentation in the application for the Permit or in the information required under this Law in relation to the Permit;
  - (f) a Permittee fails to comply with any other requirements of this Law or a regulation made under this Law;
  - (g) a Permit is replaced by a regulation; or
  - (h) a Permit is not, in the opinion of the Lands Governance Director, in the interest of the Skowkale First Nation.
- (4) In addition to the authority conferred by subsection (1), the Lands Governance Director may, without notice to the Permittee,
- (a) suspend a Permit for any length of time requested if the Permittee requests in writing that the Permit be suspended; or
  - (b) cancel a Permit if the Permittee
    - (i) dies,
    - (ii) is a corporation that is liquidated, dissolved or otherwise wound up or has had its registration cancelled,
    - (iii) is a partnership that has dissolved, or

- (iv) requests that the Permit be cancelled.
- (5) For certainty, a Permit that is suspended or cancelled is not a valid and subsisting Permit.

### **Variance Orders**

- 14.** (1) If the Lands Governance Director considers that a Person should have temporary relief from a requirement of a Permit or an order issued under this Law, the Lands Governance Director may issue a variance order in relation to a requirement of the Permit or order.
- (2) If the Lands Governance Director issues a variance order, the Lands Governance Director must
- (a) specify the requirements and conditions in relation to the relief;
  - (b) specify the period during which the variance order will remain in effect; and
  - (c) publish a notice of the variance order
    - (i) on the Skowkale First Nation website, if the Skowkale First Nation maintains a website,
    - (ii) in the Skowkale First Nation newsletter, if the Skowkale First Nation produces a regular newsletter,
    - (iii) on all notice boards used by the Skowkale First Nation government to notify Members of Skowkale First Nation business, and
    - (iv) at the site that is the subject of the Permit, if applicable.
- (3) Nothing in this section prevents the Lands Governance Director from
- (a) cancelling a variance order; or
  - (b) renewing or extending a variance order.

### **Written Reasons**

- 15.** Where the Lands Governance Director refuses to issue, suspends or cancels a Permit, the Lands Governance Director must provide written reasons for the refusal, suspension or cancellation to the applicant or to the Permittee, as the case may be, in accordance with section 60.

## **PART 3– POWERS IN RELATION TO MANAGING THE ENVIRONMENT**

### **Reporting a Discharge of a Polluting Substance or Waste**

16. (1) In this section, “**Polluting Substance**” means any Substance that, in the opinion of the Lands Governance Director, is capable of causing Pollution if it were to be Discharged into the Environment.
- (2) If a Polluting Substance or Waste is Discharged into the Environment other than as allowed or authorized by section 7, every Person who
- (a) had possession, charge or control of the Substance or Waste immediately before the Discharge;
  - (b) contributed to the Discharge; or
  - (c) increased the likelihood of such a Discharge
- must, immediately after he or she learns of the Discharge, at that Person’s expense
- (d) subject to any regulations made under this Law, report the Discharge or likely Discharge to the Lands Governance Director;
  - (e) take all reasonable measures consistent with public safety to stop the Discharge, repair any damage caused by the Discharge and prevent or eliminate any danger to life, health, property or the Environment that results or may be reasonably expected to result from the Discharge or likely Discharge; and
  - (f) make a reasonable effort to notify every member of the public who may be adversely affected by the Discharge or likely Discharge.
- (3) In a prosecution for a contravention of subsection (2), it is presumed that the accused knew of the Discharge at the time of the alleged contravention and the burden of proving that he or she did not know is on the accused.

### **Pollution Prevention Order**

17. (1) If the Lands Governance Director is satisfied on reasonable grounds that an activity or operation has been or is being performed by a Person in a manner that has released, is releasing or is likely to release a Substance that will cause Pollution, the Lands Governance Director may order any of the following Persons, at that Person’s expense, to do any of the things referred to in subsection (2):
- (a) a Person who previously had or now has possession, charge or control of the Substance;
  - (b) a Person who previously did anything, or who is now doing anything, which may cause the Discharge of the Substance; or
  - (c) a previous or current Owner or occupier of the land on which the Substance is located.
- (2) An order under this section may require the Person named in the order to do one or more of the following:

- (a) provide to the Lands Governance Director information the Lands Governance Director requests relating to the activity, operation, or Substance;
  - (b) undertake investigations, tests, surveys or any other action the Lands Governance Director considers necessary to prevent the Pollution and report the results to the Lands Governance Director;
  - (c) acquire, construct or carry out any works or measures that are reasonably necessary to prevent the Pollution; or
  - (d) adjust, repair or alter any works or measures to the extent reasonably necessary to prevent the Pollution.
- (3) An order made under this section may authorize a person or persons designated by the Lands Governance Director to enter land for the purpose of preventing the Pollution.
- (4) The powers of the Lands Governance Director under this section may not be exercised in relation to any part of an activity or operation that is in compliance with the regulations or a permit, approval, or order.

#### **Pollution Abatement Order**

- 18.** (1) If the Lands Governance Director is satisfied on reasonable grounds that a Substance is causing Pollution, the Lands Governance Director may order any of the following Persons, at that Person's expense, to do any of the things referred to in subsection (2):
- (a) a Person who had possession, charge or control of the Substance at the time it was Discharged into the Environment;
  - (b) every Owner or occupier of land on which the Substance is located or on which the Substance was located immediately before it was Discharged into the Environment;
  - (c) a Person who caused or authorized the Pollution.
- (2) An order made under this section may require the Person named in the order to do one or more of the following:
- (a) provide to the Lands Governance Director information that the Lands Governance Director requests relating to the Pollution;
  - (b) undertake investigations, tests, surveys and any other action the Lands Governance Director considers necessary to determine the extent and effects of the Pollution and to report the results to the Lands Governance Director;
  - (c) acquire, construct or carry out any works or measures that are reasonably necessary to control, abate or stop the Pollution;
  - (d) adjust, repair or alter any works to the extent reasonably necessary to control, abate or stop the Pollution;
  - (e) abate the Pollution;



- (f) prepare a remediation plan for the Lands Governance Director's approval; or
  - (g) carry out remediation in accordance with any criteria established by the Lands Governance Director.
- (3) For certainty, the issuance of an order under this section does not preclude the application of PART 4 or the prosecution of an offence under PART 8.

### **Lands Governance Director May Remediate**

19. (1) Where a Person fails or neglects to repair or remedy any injury or damage to the Environment in accordance with an order made under section 18 or where immediate remedial measures are required to protect the Environment, the Lands Governance Director may, at the Person's expense, cause to be carried out the measures that the Lands Governance Director considers necessary to repair or remedy an injury or damage to the Environment that results from any Discharge.
- (2) For the purposes of this section, anything done or omitted by a person acting in the course of the person's employment is also the act or omission of the person's employer.

### **Emergency Order**

20. (1) Despite section 60, where, in the opinion of an Inspector, an emergency exists and an order must be issued under section 18, the Inspector may issue a verbal or written order to the Person who, in the opinion of the Inspector, is best able to comply with the order.
- (2) An order issued under subsection (1) will take effect from the time it is issued.
- (3) A verbal order issued under subsection (1) has the same force and effect as a written order.
- (4) An order issued under subsection (1) must be served in written form in accordance with section 60 as soon as is practicable after it is issued.

## **PART 4– UNSIGHTLY LAND**

### **Meaning of Unsightly Land**

21. Land is unsightly where an Inspector believes, on reasonable grounds, and in comparison to land used for a similar purpose, that litter or things placed on the land cause the land to be unsightly.

### **Unsightly Land**

22. An Owner or occupier of Skowkale Lands must not allow that land to become unsightly.

### **Order to Improve Condition of Land**

23. Where an Inspector believes on reasonable grounds that any Skowkale Lands are unsightly, the Lands Governance Director may issue an order to the Owner or occupier of

the land or the last Person to hold an Interest in or occupy the land to improve the condition of the land in such manner and to such extent as may be set out in the order.

### **Improvement of Condition of Land by Lands Governance Director**

24. Where a Person fails to comply with an order under section 23, the Lands Governance Director may, at that Person's own expense, take such action as he or she considers necessary to improve the condition of the land in accordance with the order.

### **Limitation**

25. The Lands Governance Director must not make an order under section 23 to a Person who is the last Person to hold an Interest in or occupy the land that is unsightly more than five (5) years after that Person ceased to hold and Interest in or occupy the land.

## **PART 5 - CONTAMINATED SITE REMEDIATION**

### **Site Profiles**

26. (1) A Person must provide a Site Profile in the form specified by Council to the Lands Governance Director when the Person applies for or otherwise seeks approval for the following in relation to Skowkale Lands that the Person knows or reasonably should know is or were used for industrial or commercial activity:
- (a) a subdivision;
  - (b) change in land use, including zoning, demolition or development;
  - (c) the removal of soil; or
  - (d) any other activity or undertaking prescribed by Council.
- (2) An Owner of Skowkale Lands must provide a Site Profile to the Lands Governance Director if
- (a) the Owner's land is used or has been used for activities listed in Schedule 2 of the *Contaminated Sites Regulation* or prescribed by Council;
  - (b) the Owner dismantles a building or structure, or otherwise decommissions a type of site which was used for an industrial or commercial purpose or activity listed in Schedule 2 of the *Contaminated Sites Regulation* or prescribed by Council; or
  - (c) the Owner applies for or otherwise seeks approval for any other activity listed in Schedule 2 of the *Contaminated Sites Regulation* or prescribed by Council.
- (3) A vendor of Skowkale Lands must provide a Site Profile to the Lands Governance Director if the vendor knows or reasonably should know that land has been used for a purpose or activity listed in Schedule 2 of the *Contaminated Sites Regulation*.

- (4) A trustee, receiver or liquidator or a Person commencing foreclosure proceedings who, in accordance with Part 9 of the Land Code, takes possession or control of an Interest for the benefit of one or more creditors must provide a Site Profile to the Lands Governance Director if the land has been used for a purpose or activity listed in Schedule 2 of the *Contaminated Sites Regulation*.
- (5) The Lands Governance Director may order a Person to prepare and provide to the Lands Governance Director, at that Person's own expense, a Site Profile if that Person
  - (a) has an Interest in or occupies Skowkale Lands that, in the opinion of the Lands Governance Director, may be a Contaminated Site on account of any past or current use on that or other land; or
  - (b) is a Person referred to in subsections (1) to (4) and fails to provide a satisfactorily completed Site Profile.
- (6) If the Lands Governance Director orders the preparation of a Site Profile under subsection (5) respecting land that is subsequently determined not to be a Contaminated Site, the Lands Governance Director and the Skowkale First Nation are not liable for any costs incurred by a Person in preparing the Site Profile.
- (7) Except for the duty of a vendor to provide a Site Profile to a prospective purchaser under subsection (3), the duty to provide a Site Profile does not apply if a Person
  - (a) has been ordered to undertake a Site Investigation under section 27;
  - (b) seeks and obtains a determination that the site is a Contaminated Site under section 28; or
  - (c) has already provided a Site Profile for the site under subsection (1).

### **Site Investigations**

27. (1) Subject to this section and section 40, the Lands Governance Director may order a Site Investigation in accordance with sections 41(1) to 41(3) of the *Environmental Management Act*.
- (2) Subject to subsection (3), references to "regulations" in section 41 of the *Environmental Management Act* means sections 58 and 59 of the *Contaminated Sites Regulation*.
- (3) The reference to the "director" in section 41(2) of the *Environmental Management Act* is replaced with the "Lands Governance Director and the Skowkale First Nation".
- (4) The duty to undertake a Site Investigation and to prepare a report of the investigation under this section does not apply if a Person seeks and obtains a determination that a site is a Contaminated Site under section 28.

### **Determination of Contaminated Sites**

- 28.** (1) The Lands Governance Director may determine whether a site is a Contaminated Site and, if the site is a Contaminated Site, the Lands Governance Director may determine the boundaries of the Contaminated Site.
- (2) Subject to subsection (3), in determining whether a site is a Contaminated Site, the Lands Governance Director must do all of the following:
- (a) make a preliminary determination of whether or not a site is a Contaminated Site on the basis of a Site Profile, a Site Investigation, or other available information;
  - (b) give notice in writing of the preliminary determination in accordance with section 60 to
    - (i) the Person who submitted the Site Profile or Site Investigation for the site,
    - (ii) any Person with an Interest in the site as shown in the Registry at the time the Lands Governance Director searches the Registry, and
    - (iii) any Person known to the Lands Governance Director who may be a Responsible Person under section 30 if the site is finally determined to be a Contaminated Site;
  - (c) provide an opportunity for any Person to comment on the preliminary determination;
  - (d) make a final determination of whether or not a site is a Contaminated Site;
  - (e) give notice in writing of the final determination in accordance with section 60 to
    - (i) the Person who submitted the Site Profile or Site Investigation for the site,
    - (ii) any Person with an Interest in the site as shown in the Registry at the time of the final determination,
    - (iii) any Person known to the Lands Governance Director who may be a Responsible Person under section 30 if the site is finally determined to be a Contaminated Site, and
    - (iv) any Person who commented under paragraph (c); and
  - (f) carry out any other procedures under paragraph (c).
- (3) The Lands Governance Director, on request by any Person, may omit the procedures set out in subsections (2)(a) to (2)(c) and make a final determination that a site is a Contaminated Site if the Person
- (a) provides reasonably sufficient information to determine that the site is a Contaminated Site; and
  - (b) agrees to be a Responsible Person for the Contaminated Site.

- (4) The lack of a determination under subsection (2) or (3) does not mean that a site is not a Contaminated Site.
- (5) In addition to a site in respect of which the Lands Governance Director makes a determination under subsection (1), a site is considered to be or to have been a Contaminated Site if the Lands Governance Director has done any of the following:
  - (a) determined that a Responsible Person is a Minor Contributor with respect to the site under section 34;
  - (b) issued a Certificate of Compliance with respect to remediation of a site under section 35.
- (6) A final determination made under this section is a decision that may be reviewed in accordance with Part 10 of the Land Code.

### **Site Registry**

29. (1) A Site Registry is established and may be kept by registering documents in the First Nations Land Registry or a separate registry in the S.A.Y. Lands Office.
- (2) The Lands Governance Director is responsible for managing the Site Registry.
- (3) The Lands Governance Director must cause to be entered in the Site Registry, in a suitable form, information respecting
  - (a) all Site Profiles and Site Investigations that the Lands Governance Director receives;
  - (b) all orders, approvals and decisions, including determinations under section 28 made by the Lands Governance Director under this Part;
  - (c) declarations and orders made by the Lands Governance Director under section 37; and
  - (d) other information required by this Law, and other applicable laws, regulations or orders.
- (4) Subject to subsection (5), the public may access the Site Registry for the purposes of viewing and obtaining copies of information during normal business hours.
- (5) The Lands Governance Director must ensure that the information contained in documents in the Site Registry available for public viewing under subsection (4) is redacted to comply with applicable privacy legislation.

### **Persons Responsible for Remediation of Contaminated Sites**

30. (1) Subject to subsections (2) and (3), and section 40, a Person responsible for remediation must be determined in accordance with section 45 of the *Environmental Management Act*.
- (2) Section 45(1)(e) of the *Environmental Management Act* does not apply.

- (3) Sections 45(3) and (4) of the *Environmental Management Act* apply to the extent permitted under Part 9 of the Land Code.
- (4) For certainty, a trustee, receiver or liquidator of a person who is or has been an owner or operator of a Contaminated Site is considered an owner or operator of the site.
- (5) A trustee, receiver or liquidator who is an owner or operator of a Contaminated Site
  - (a) is designated responsible, in his or her role as trustee, receiver or liquidator for remediation of the Contaminated Site, and, for certainty, is eligible to be issued an order under section 17 or 18 related to the Contaminated Site; and
  - (b) is designated not personally liable for remediation of the Contaminated Site unless
    - (i) the trustee, receiver or liquidator at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a Substance;
    - (ii) the trustee, receiver or liquidator was grossly negligent or guilty of wilful misconduct in the exercise of such control over or the imposition of such requirements on a person; and
    - (iii) such control or requirements caused the site to become, in whole or in part, a Contaminated Site.

### **Persons Not Responsible for Remediation of Contaminated Sites**

31. (1) Subject to this section, and section 40, a Person not responsible for remediation must be determined in accordance with section 46 of the *Environmental Management Act*.
- (2) The reference to “April 1, 1997” in section 46(1)(a) of the *Environmental Management Act* is replaced with the date that this law is passed by Skowkale Council.
- (3) The reference to a “government body” in sections 46(1)(l) and 46(2) of the *Environmental Management Act* is replaced with the “Skowkale First Nation government and, if applicable, the federal and provincial governments”.
- (4) Sections 46(1)(g.1), 46(1)(n), and 46(2.1) of the *Environmental Management Act* do not apply.

### **General Principles of Liability for Remediation**

32. (1) A Person who is responsible for remediation of a Contaminated Site is absolutely, retroactively and jointly and separately liable to any Person or the Skowkale First Nation government for reasonably incurred costs of remediation of the Contaminated Site, whether incurred on or off the Contaminated Site.
- (2) Subsection (1) must not be construed as prohibiting the apportionment of a share of liability to one or more Responsible Persons by the court in an action or proceeding under subsection (5) or by the Lands Governance Director in an order under section 33.

- (3) For the purpose of this section, “costs of remediation” means all costs of remediation and includes, without limitation,
  - (a) costs of preparing a Site Profile;
  - (b) costs of carrying out a Site Investigation and preparing a report, whether there has been a determination under section 28 as to whether the site is a Contaminated Site;
  - (c) legal and consultant costs associated with seeking contributions from other Responsible Persons; and
  - (d) fees imposed under the authority of a regulation made under this Law or designated by Council.
- (4) Liability under this Part applies
  - (a) even though the introduction of a Substance into the Environment is or was not prohibited by an Skowkale First Nation law or applicable federal or provincial law if the introduction contributed in whole or in part to the site becoming a Contaminated Site; and
  - (b) despite the terms of any cancelled, expired, abandoned or current approval that authorizes the discharge of Substances into the Environment.
- (5) Subject to section 34(3), any Person, including a Responsible Person and the Lands Governance Director, who incurs costs carrying out remediation of a Contaminated Site may commence an action or a proceeding to recover the reasonably incurred costs of remediation from one or more Responsible Persons in accordance with the principles of liability set out in this Part.
- (6) Subject to subsection (7), a Person is not required to obtain, as a condition of an action or proceeding under subsection (5) being heard by a court, a decision, determination, opinion or apportionment of liability for remediation from the Lands Governance Director.
- (7) In all cases, the site that is the subject of an action or proceeding must be determined or considered under section 28 to be or to have been a Contaminated Site before the court can hear the matter.
- (8) The court may determine, unless otherwise determined or established under this Part, any of the following:
  - (a) whether a Person is responsible for remediation of a Contaminated Site;
  - (b) whether the costs of remediation of a Contaminated Site have been reasonably incurred and the amount of the reasonably incurred costs of remediation;
  - (c) the apportionment of the reasonably incurred costs of remediation of a Contaminated Site among one or more Responsible Persons in accordance with the principles of liability set out in this Part; and

- (d) such other determinations as are necessary to a fair and just disposition of these matters.

### **Remediation Orders**

- 33. (1) Subject to this section, and section 40, the Lands Governance Director may issue a Remediation Order in accordance with section 48 of the *Environmental Management Act*.
- (2) Sections 48(3)(d), 48(3)(e), 48(3)(f), 48(6), 48(7), 48(10) and 48(11) of the *Environmental Management Act* do not apply.
- (3) In addition to the factors provided under section 48(3) of the *Environmental Management Act*, as modified under this section, the Lands Governance Director must consider any other factors prescribed by Council.
- (4) If a Remediation Order that imposes a requirement for remediation is issued in respect of a site, and the Lands Governance Director has not yet determined under section 28 whether the site is a Contaminated Site, as soon as reasonably possible after the issuance of the order, the Lands Governance Director must determine
  - (a) whether the site is a Contaminated Site in accordance with section 28; and
  - (b) whether the Person named in the order is a Responsible Person in accordance with section 30.
- (5) If a Person named in an order referred to in subsection (4) is determined not to be a Responsible Person, the Skowkale First Nation government must compensate the Person for any reasonable costs directly incurred by the Person in complying with the order.

### **Minor Contributors**

- 34. (1) The Lands Governance Director may determine that a Responsible Person is a Minor Contributor if the person demonstrates that
  - (a) only a minor portion of the Contamination present at the site can be attributed to the person;
  - (b) either
    - (i) no remediation would be required solely as a result of the contribution of the person to the Contamination at the site, or
    - (ii) the cost of remediation attributable to the person would be only a minor portion of the total cost of the remediation required at the site; and
  - (c) in all circumstances the application of joint and separate liability to the person would be unduly harsh.



- (2) If the Lands Governance Director makes a determination under subsection (1) that a Responsible Person is a Minor Contributor, the Lands Governance Director must determine the amount or portion of remediation costs attributable to the Responsible Person.
- (3) A Responsible Person determined to be a Minor Contributor under subsection (1) is liable for remediation costs in an action or proceeding brought by another person or the Skowkale First Nation government under section 32 only up to the amount or portion specified by the director in the determination under subsection (2).
- (4) If the Lands Governance Director has determined that a Responsible Person is a Minor Contributor for a site, the site is considered to be a Contaminated Site at the time of that determination, despite the absence of a determination under section 28(1).

### **Certificate of Compliance**

35. Upon completion of the remediation of a Contaminated Site to the satisfaction of the Lands Governance Director and in accordance with the Remediation Order, the Lands Governance Director must, within a reasonable time, deliver a Certificate of Compliance to every Person holding an Interest in the site if the Interest is registered in the Registry at the time of issuing the Certificate of Compliance.

### **Selection of Remediation Options**

36. (1) A Person conducting or otherwise providing for remediation of a site must give preference to remediation alternatives that provide permanent solutions to the maximum extent practicable, taking into account the following factors:
  - (a) any potential for adverse effects on human health or the Environment;
  - (b) the technical feasibility and risks associated with alternative remediation options;
  - (c) remediation costs associated with alternative remediation options and the potential economic benefits, costs and effects of the remediation options; and
  - (d) any other factors prescribed by Council.
- (2) When issuing a Certificate of Compliance, the Lands Governance Director must consider whether permanent solutions have been given preference to the maximum extent practicable as determined in accordance with any guidelines set out in any regulations made under this Law.

### **Orphan Sites**

37. (1) Subject to section 40, the Lands Governance Director may determine whether a Contaminated Site is an Orphan Site in accordance with section 61 of the *Contaminated Sites Regulation*.
- (2) The Lands Governance Director may declare, in writing, that it is necessary for the protection of human health or the Environment for the Skowkale First Nation government to undertake remediation of an Orphan Site.

- (3) If the Lands Governance Director has made a declaration under subsection (2),
- (a) the Lands Governance Director may carry out remediation and recover the reasonably incurred costs of the remediation and the Lands Governance Director may, even though the ordered action interferes or takes away property rights, order any Person to
    - (i) provide labour, services, material, equipment or facilities, or
    - (ii) allow the use of land for the purpose of undertaking the remediation; and
  - (b) the Lands Governance Director, or any person authorized by the Lands Governance Director, may enter property and carry out remediation, even though the entry or remediation interferes with or abrogates property rights.
- (4) A Person affected by an order made under subsection (3)(a) must comply with the order despite any other enactment.
- (5) A certificate signed by the Lands Governance Director and showing an amount of money spent by the Skowkale First Nation government under this section is conclusive proof of the amount spent.
- (6) If the Lands Governance Director makes a declaration under subsection (2) or an order under section (3)(a), a notation must be made in the Registry of the declaration or order against the property that has been remediated under this section.

### **Cost Recovery if Lands Governance Director Carries out Remediation**

- 38.** (1) The Lands Governance Director may recover all or a portion of the cost of remediation by
- (a) taking steps to identify and recover costs from Responsible Persons during or after remediation; or
  - (b) arranging to sell or selling any goods or equipment or property located on or comprising all or part of the site.
- (2) The amount shown on the certificate under section 37(5) is a debt due to the Skowkale First Nation government and, subsection to section (3), is recoverable
- (a) from any Responsible Person, by action in a court of competent jurisdiction;
  - (b) by order of the Lands Governance Director directing a Person who is purchasing or otherwise acquiring an Interest in land that is subject to remediation under section 37 to pay to the Lands Governance Director, in relation to the amounts spent on remediation, instead of to the vendor, an amount not exceeding the amount owing to the vendor, and the purchaser is discharged in the amount paid to the Lands Governance Director from the obligation to pay the vendor; or
  - (c) by adding the debt to property taxes or other fees or taxes owing if permitted by Skowkale laws.

- (3) If a court is satisfied that the expenditure incurred by the Skowkale First Nation government under section 37 is either excessive or unnecessary taking into consideration generally accepted remediation practices, the court may reduce or extinguish the amount of the judgement that it would otherwise have ordered against the Person against whom the action has been brought.
- (4) If the Lands Governance Director makes an order under subsection (2)(b), a notation must be made in the Registry of the order against the property that has been remediated under this section.

### **Lands Governance Director Retains Right to Take Future Action**

**39.** The Lands Governance Director may exercise any of the Lands Governance Director's duties or powers under this Part, even though they have been previously exercised and despite any voluntary remediation, if

- (a) additional information relevant to establishing liability for remediation becomes available, including information that indicates that a Responsible Person does not meet the requirements of a Minor Contributor;
- (b) activities occur on a site that may change its condition or use;
- (c) information becomes available about a site or a Substance at the site that leads to a reasonable inference that the site poses a threat to human health or the Environment;
- (d) a Responsible Person fails to exercise due care in relation to any Contamination at the site; or
- (e) a Responsible Person directly or indirectly contributes to Contamination at the site after previous action.

### **Provisions of the *Environmental Management Act***

**40.** This Part incorporates by reference the standards and procedures set out in the provincial *Environmental Management Act*, the *Contaminated Sites Regulation* and the *Hazardous Waste Regulation* subject to such modifications as are required for consistency with this Law, other applicable Skowkale laws and the Land Code. The following rules of interpretation apply to sections 27, 30, 31, 33 and 37 under which Skowkale First Nation relies on provisions of the *Environmental Management Act* or the *Contaminated Sites Regulation*:

- (a) without restricting the application of the rules under this section, necessary changes on points of detail may be made to the referenced provisions of the *Environmental Management Act* or the *Contaminated Sites Regulation* to ensure compliance with the terminology and procedures outlined in this Law and other applicable Skowkale First Nation laws and the Land Code;
- (b) for certainty, if this Law modifies a section of the *Environmental Management Act* or the *Contaminated Sites Regulation*, and the same section is referenced in additional sections of the *Environmental Management Act* or the *Contaminated Sites Regulation*,

*Regulation* that apply to this Law, the applicable section must be interpreted subject to the modifications provided under this Law;

- (c) if a defined term has different meanings under the applicable sections of the *Environmental Management Act* or the *Contaminated Sites Regulation* and this Law, the definition for the term provided under this Law prevails;
- (d) subject to section 27(3) and with the exception to references to a “director’s protocol”, references to the “director” in the applicable sections of the *Environmental Management Act* or the *Contaminated Sites Regulation* are replaced with the “Lands Governance Director”;
- (e) subject to section 31(3), references to “government body” or “government” in the applicable sections of the *Environmental Management Act* or the *Contaminated Sites Regulation* are replaced with the “Skowkale First Nation government”;
- (f) references to an “order” in the applicable sections of the *Environmental Management Act* or the *Contaminated Sites Regulation* means an “order issued by the Lands Governance Director”;
- (g) references to “the land title office or a land registry office of a treaty first nation” in the applicable sections of the *Environmental Management Act* or the *Contaminated Sites Regulation* are replaced with “the Registry”.

## **PART 6- DISPUTE RESOLUTION**

### **Review**

#### **41. A Person**

- (a) whose application for a Permit is refused;
- (b) whose Permit has been issued subject to conditions;
- (c) whose Permit has been suspended or cancelled; or
- (d) who is the subject of an order issued under this Law

may, within 30 days of receiving notice of the applicable decision, request a review in accordance with Part 10 of the Land Code.

### **Effect of review**

- 42. (1)** A request to review an order made under section 17 or 23 acts as a temporary stay of that order until the review is completed or terminated in accordance with Part 10 of the Land Code.
- (2) A request to review an order made under section 18 or 20 does not act as a stay of the operation of that order.

- (3) Nothing in this section limits the Lands Governance Director's discretion to temporarily stay any other order made under this Law if the person named in the order requests a stay in his or her request to review the order.

## **PART 7 - ENFORCEMENT**

### **Inspectors**

43. (1) Council or the Lands Governance Director may appoint Inspectors and must specify in the appointment the duties that may be performed and the powers that may be exercised by an Inspector under this Law.
- (2) Every Inspector must be furnished with identification in a form approved by the Lands Governance Director, and on entering any place or vehicle under this Law, must, if so requested by the Owner or person in charge, produce that identification.

### **Authority of Inspectors**

44. (1) Subject to an Skowkale First Nation law that addresses enforcement powers of individuals appointed to enforce an Skowkale First Nation law, and without limiting an Inspector's powers at law, an Inspector is authorized to do the following for the purpose of performing his or her duties or exercising his or her powers in relation to this Law:
- (a) issue compliance notices;
  - (b) issue tickets;
  - (c) at any reasonable time, enter
    - (i) land or unoccupied premises, or
    - (ii) a dwelling with the consent of the occupier or if authorized by an Skowkale First Nation law or warrant issued by a court of competent jurisdiction;
  - (d) in a manner that is consistent with enforcement measures under federal legislation, make any reasonable inspection, investigation or inquiry necessary to determine if this Law, or a compliance notice, ticket, order or other instrument issued under this Law, has been complied with or contravened, or an offence is being committed or has been committed;
  - (e) issue a stop work order to order any Person who has not received full and proper authorization under this Law to cease carrying out any activity or undertaking;
  - (f) provide to an authorized prosecutor information sufficient to initiate the prosecution of an offence; and
  - (g) perform any other duties and exercise any other powers assigned or delegated to the Inspector
    - (i) under this or any other Skowkale First Nation law, or

(ii) by Council.

(2) For certainty, an Inspector, acting in the performance of a duty or in the exercise of a power under this Law, may enter and pass over any Skowkale Lands without being liable for trespass but is liable for damages to the land resulting from his or her activities.

(3) Subsection (2) applies to any person who is assisting an Inspector.

## PART 8– OFFENCES

### Penalties

45. (1) A Person who contravenes section 7(6) or section 9 commits an offence and is liable on conviction to a fine not exceeding \$2,000 or imprisonment for not more than six (6) months, or both.
- (2) A Person who contravenes sections 7(1), 7(2) or 7(3) commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for not more than six (6) months, or both.
- (3) A person who obstructs or resists an Inspector who is performing duties under this Law or who fails to comply with a requirement of an Inspector imposed under this Law commits an offence and is liable on conviction to a fine not exceeding \$200,000 or imprisonment for not more than six (6) months, or both.
- (4) A Person who, holding a Permit, introduces Waste into the Environment without having complied with the requirements of the Permit commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for not more than six (6) months, or both.
- (5) A Person who, holding a Permit, fails to comply with the requirements of the Permit other than as provided for under subsection (4), commits an offence and is liable on conviction to a fine not exceeding \$300,000 or imprisonment for not more than six (6) months, or both.
- (6) A Person who contravenes an order or requirement that is given, made or imposed under this Law commits an offence and is liable on conviction to a fine not exceeding \$300,000 or imprisonment for not more than six (6) months, or both, but an order is not contravened unless it
- (a) was given in writing; and
- (b) specified a reasonable period of time for compliance and that period has expired.
- (7) A Person who contravenes a requirement related to Hazardous Waste under this Law, including under any regulation made under this Law, or a provincial regulation referenced in this Law, commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for not more than six (6) months, or both.

- (8) A Person who contravenes a requirement of this Law, including under any regulation made under this Law, or a provincial regulation referenced in this Law, that specifies the quantity or characteristics of Waste that may be introduced into the Environment commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for not more than six (6) months, or both.
- (9) A Person who fails to report a Discharge and otherwise comply with section 16(2) commits an offence and is liable on conviction to a fine not exceeding \$200,000 or imprisonment for not more than six (6) months, or both.
- (10) A Person who contravenes an order under section 46 commits an offence and is liable to the penalties provided for the offence in relation to which the order was made.
- (11) A Person who
- (a) fails to submit a Site Profile as required under section 26 or supplies a Site Profile that the Person knows to contain false or misleading information;
  - (b) fails to undertake a Site Investigation and to prepare a report of the investigation under section 28;
  - (c) fails to comply with a Remediation Order under section 33
- commits an offence and is liable on conviction to a fine not exceeding \$200,000 or imprisonment for not more than six (6) months, or both.
- (12) Any fine, penalty, fee or debt levied under this law may be added to a Person's property taxes in accordance with Skowkale law.
- (13) A proceeding, conviction or penalty for an offence under this Law does not relieve a Person from any other liability.

### **Other Penalties**

- 46.** On a conviction for a contravention of this Law, in addition to or instead of a fine or other penalty, the court may require the convicted Person:
- (a) to take any action as may be necessary to refrain from causing any further adverse effect;
  - (b) to take any action as may be necessary to restore or rehabilitate the Environment affected by the commission of the offence;
  - (c) to make restitution to any Person who suffered damages as a result of the commission of the offence as the judge may consider appropriate; or
  - (d) to undertake any other actions as may be necessary to achieve compliance.

### **Continuing Offence**

47. Where any contravention of this Law is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

### **Further Prosecution**

48. (1) The conviction of a Person for an offence under this Law does not prohibit further prosecution of that Person for the continued neglect or failure on his or her part to comply with this Law or any order or notice made or given under this Law.

(2) Nothing in section 17, 18, 20, or 23 prohibits a prosecution for contravening sections 7(1), 7(2) or 7(3).

### **Proof of Offence**

49. In a prosecution for an offence under this Law it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence.

### **Liability of Directors**

50. (1) Where a corporation commits an offence under this Part, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and commits the offence.

(2) An officer, director or agent of a corporation is liable to conviction under subsection (1) whether or not the corporation has been prosecuted for or convicted of the offence.

## **PART 9- OTHER REMEDIES**

### **Joint and Several Liability for Costs and Expenses**

51. (1) The Skowkale First Nation government may claim and recover the reasonable expenses incurred in taking any measures under this Law from every Person who, through his or her actions or negligence or the actions or negligence of others for whom he or she is by law responsible contravened this Law.

(2) Where the Skowkale First Nation government may claim and recover expenses from two or more Persons under subsection (1), the expenses may be recovered jointly and separately from those Persons.

(3) Where a Person fails to comply with an order issued under this Law, that Person is liable for all expenses incurred as a result of any action taken under this Law to carry out the order.

(4) A claim for costs and expenses under this Law may be sued for and recovered with costs as a debt due to the Skowkale First Nation government.

### **Request for records**



52. (1) The Lands Governance Director may, in writing, require that, within a specific time, any records that are required to be maintained for the purposes of this Law be provided to the Lands Governance Director by the Owner or Person who is required to maintain records.
- (2) A Person who receives a written request under subsection (1) must comply with the request.

## PART 10 - REGULATIONS

### Regulations

53. (1) Council may make regulations it considers necessary or advisable for the purposes of this Law.
- (2) Without limiting the generality of subsection (1), Council may make regulations prescribing:
- (a) any matter that may be prescribed under this Law;
  - (b) a Substance as a Waste and prescribing circumstances in which a Substance is a Waste;
  - (c) a Substance as a Hazardous Waste;
  - (d) the reporting of Discharges of Waste or classes of Waste or the likely Discharge of Waste or classes of Waste;
  - (e) the methods for sampling and analyzing Waste or classes of Waste;
  - (f) the methods for sampling and analyzing the rate of emission of a Waste or class of Waste into the Environment;
  - (g) the manufacture, use, installation, removal or modification of equipment designed to control the release of Waste or class of Waste;
  - (h) categories of Waste or classes of Waste;
  - (i) the design, construction, identification, siting and operation of disposal sites for Waste or classes of Waste;
  - (j) respecting the requirements for the identification, storage, handling, Discharge, transport or use of Waste or classes of Waste;
  - (k) methods of collection, treatment, distribution, recycling, reuse or disposal of Waste or classes of Waste;
  - (l) keeping of and allowing the inspection of records;
  - (m) classes of Permits;

- (n) requirements for the application, issuing, refusal and suspension of Permits;
  - (o) measures required and the standards to be met for the remedy or repair of any injury or damage to the Environment;
  - (p) material and equipment required to be on hand to alleviate the effect of any Discharge of Waste or classes of Waste;
  - (q) safeguards required to prevent the Discharge of Waste or classes of Waste;
  - (r) additional prohibitions or regulation of litter;
  - (s) situations where a Person must provide a Site Profile;
  - (t) contents of forms to be used under this Law;
  - (u) fees to be charged under this Law; and
  - (v) any other matter necessary to carry out the purposes and provisions of this Law.
- (3) Despite subsections (2)(t) and (2)(u), Council may designate forms to be used under this Law and fees to be charged under this Law by Council Resolution.

## **PART 11– GENERAL PROVISIONS**

### **Severability**

- 54.** In the event that all or any part of any section or other provision of this Law are found by a court of competent jurisdiction to be invalid, such section or other provision will be severable, and the remaining provisions or sections will remain in full force and effect.
- 55.** The invalidity of all or any part of any section or provision of this Law will not affect the validity of any other section or provision of this Law that will be given effect without such invalid section or provision.

### **Limitation of Liability**

- 56.** (1) No action lies, and no proceeding may be brought against the Skowkale First Nation, or a manager, employee, servant, official or agent of the Skowkale First Nation, including for greater certainty, the Lands Governance Director:
- (a) for any act in relation to this Law;
  - (b) for anything said or done or omitted to be said or done by that Person in the performance or intended performance of the Person's duty under this Law;
  - (c) for the exercise of the Person's authority under this Law, including providing advice, making recommendations, or the failure to provide advice or make recommendations under this Law; or

(d) for any alleged neglect or default in the performance or intended performance of the Person's duty or the exercise of the Person's authority under this Law.

(2) Without limiting subsection (1), if the Skowkale First Nation, or a manager, employee, servant, official or agent of the Skowkale First Nation, including for greater certainty, the Lands Governance Director, rely honestly and without gross negligence, malice or wilful misconduct on the contents of

(a) a preliminary determination or final determination under section 28; or

(b) a Certificate of Compliance under section 35

produced pursuant to this Law, those named parties are not liable for damages arising from reliance on the determination or certificate.

### **Defence**

**57.** Section 56 does not provide a defence if:

(a) the Skowkale First Nation, or a manager, employee, servant, official or agent of the Skowkale First Nation, has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or

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

### **Failing to Discover a Contravention**

**58.** The Skowkale First Nation, or a manager, employee, servant, official or agent of the Skowkale First Nation, is not liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of their neglect or failure, for any reason, to discover or detect any contraventions of this Law.

### **Limitation Period**

**59.** All actions against the Skowkale First Nation for the unlawful doing of anything that:

(a) is purported to have been done by the Skowkale First Nation under the powers conferred by this Law; and

(b) might have been lawfully done by the Skowkale First Nation if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose.

### **Service**

**60.** Unless otherwise provided in this Law, an order, a notice or any other document that must be delivered or served under this Law, may be delivered or served by:

- (a) personally giving the order, notice or other document to the Person to whom it is directed;
- (b) mailing the order, notice or other document, by registered mail, to the Person to whom it is directed to the last known address for that Person; or
- (c) if the Person is unknown, affixing the order, notice or other document in a conspicuous location where the undertaking or other activity of concern is occurring.

**Coming into Force**

61. This Law comes into force on the date it is passed by Council Resolution.

62. This Law applies retroactively.

BE IT KNOWN that this Law entitled the *Skowkale Environmental Protection Law*, is hereby:

Enacted by a Resolution of Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

*(A quorum is 3)*

\_\_\_\_\_  
**Chief Mark Point**

\_\_\_\_\_  
**Councillor Darcy Paul**

\_\_\_\_\_  
**Councillor Dustin Hall**

\_\_\_\_\_  
**Councillor Tiffany Silver**

\_\_\_\_\_  
**Councillor Derek Hansom**