



ENVIRONMENTAL PROTECTION LAW

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WHEREAS

- A. Since the beginning of time, Tla'amin people have lived on the lands that the Creator provided for our ancestors and all future generations of Tla'amin people;
- B. Our ancestors lived by a traditional system of governance grounded in our *Ta'ow* (teachings) and *Ee ah ju thum* (language), which were our unwritten constitution that influenced all forms of environmental stewardship matters, social and political relations. It is this system that has sustained our way of life and *Tums gijeh* (lands) and resources;
- C. Our vision of self-government and of a healthy, self-sufficient Tla'amin Nation began long ago with our ancestors and our leadership of the past. Many of those who were involved in shaping and advancing our vision have since passed on and we acknowledge their contributions and sacrifice. They put in place the foundation that we have built upon today. Those respected ones have cleared the path so that we, the Tla'amin Nation, could achieve our vision of "one heart, one mind, one Nation". It is on this basis that we accept the obligations and responsibilities inherent in governing and work to blend our traditional and modern-day governing approaches, including the development of governance laws;
- D. Our vision of self-government and of a healthy, self-sufficient Tla'amin Nation began long ago with our Ancestors and our leadership of the past. Many of those who were involved in shaping and advancing our vision have passed on and we acknowledge their contributions and sacrifice. They put in place the foundation that we have built upon today. Those respected ones have cleared the path so that we, the Tla'amin Nation, could achieve our vision;
- E. Under section 14 of the *Constitution of the Tla'amin Nation*, the Tla'amin Nation has owned and exercised stewardship over Tla'amin Territory, including the water and resources, since the beginning of time.
- F. Under section 15 of the *Constitution of the Tla'amin Nation*, the Tla'amin Nation owns Tla'amin Lands and Resources, subject to such interests as it may grant in and to those lands and resources;
- G. Under section 16 of the *Constitution of the Tla'amin Nation*, the Tla'amin Government exercises governance authority over and may make laws in respect of Tla'amin Lands and Resources, including their protection;
- H. Under section 24(b) of the *Constitution of the Tla'amin Nation*, the Tla'amin Government will make laws or establish policies that set out criteria for determining what amounts to a significant change to land use;
- I. Under chapter 13 of the *Tla'amin Final Agreement*, the Tla'amin Nation may make laws applicable on Tla'amin Lands in relation to environmental management relating to the protection, preservation and conservation of the Environment, including: prevention, mitigation and remediation of pollution and degradation of the Environment; waste management, including solid wastes and wastewater; protection of local air quality;

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protection of water quality by preventing the escape of pollution and other material from Tla'amin Lands; and environmental emergency response;

- J. Under section 8, of the *Constitution of the Tla'amin Nation*, Tla'amin Citizens have the right to be consulted by the Tla'amin Government on issues of importance to the Tla'amin Nation; and
- K. Under sections 20, 22, and 34(e) of the *Constitution of the Tla'amin Nation*, the Tla'amin Government will establish a process for consultation and public involvement in land use and development planning, and will carry out a community consultation process prior to making significant land use decisions;

NOW THEREFORE the Tla'amin Legislative Assembly enacts as follows:

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PART 1 - INTRODUCTORY PROVISIONS

Short title

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

Executive oversight

2. The member of the Executive responsible for lands and resources is responsible for the executive oversight of this Law.

Application

3. This Law applies to Tla'amin Lands, subsurface minerals and areas, the air above Tla'amin Lands, lakes, Streams, surface Water and Groundwater that form part of Tla'amin Lands and any foreshore areas over which the Tla'amin Nation has jurisdiction or delegated authority.

Definitions

4. In this Law,

“**Approval In Principle**” means an approval in principle under section 53 of the *Environmental Management Act*;

“**British Columbia**” means, unless the context otherwise requires, Her Majesty the Queen in right of the Province of British Columbia;

“**Approval In Principle**” means an approval in principle under section 53 of the *Environmental Management Act*;

“**Certificate Of Compliance**” means a certificate of compliance under section 53 of the *Environmental Management Act*;

“**Contaminated Site**” means an area of the Land in which the soil or any Groundwater lying beneath it, or the Water or the underlying sediment contains

(a) a Hazardous Waste; or

(b) a Substance prescribed in the *Contaminated Sites Regulation*,

in quantities or concentrations exceeding risk based or numerical criteria or standards or conditions prescribed

(c) in the *Hazardous Waste Regulation*; or

(d) in the *Contaminated Sites Regulation*;

(e) a Substance prescribed by the Executive in quantities or concentrations exceeding risk based or numerical criteria or standards or conditions prescribed by the

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Executive, if those criteria or standards or conditions are more onerous than prescribed at paragraphs (c) and (d);

"Contaminated Sites Regulation" means the *Contaminated Sites Regulation* (British Columbia);

"Contaminated Soil Relocation Agreement" means a contaminated soil relocation agreement under section 55 of the of the *Environmental Management Act*

"Court" means a justice of the peace or the Provincial Court unless another court is specified;

"Detailed Site Investigation" means a detailed site investigation and report under section 41 of the *Environmental Management Act* that complies with the *Contaminated Sites Regulation*;

"Discharge" includes any pumping, pouring, throwing, dumping, emitting, burning, spraying, spreading, leaking, spilling or escaping;

"Environment" means the components of the Earth and includes

- (a) air, Land and Water, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in subsections (a) and (b);

"Environmental Appeal Board" means the Environmental Appeal Board referenced in Part 8 of the *Environmental Management Act*;

"Environmental Management Act" means the *Environmental Management Act* (British Columbia);

"Facility" includes any Land or building, and any machinery, equipment, device, tank, system or other works;

"Government Body " means a federal, provincial, municipal or treaty first nation body, including an agency or ministry of the Crown in right of Canada or British Columbia and an agency of a municipality or treaty first nation;

"Groundwater" means Water below the surface of the ground;

"Hazardous Waste" has the meaning prescribed in the *Hazardous Waste Regulation*, and includes any Substance prescribed by the Executive;

"Hazardous Waste Regulation" means the Hazardous Waste Regulation (British Columbia);

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"Inspector" means an inspector under sections 49(1) and 49(2) of this Law and includes the Director of Lands and Natural Resources;

"Land" means the solid part of the earth's surface including the foreshore and Land covered by Water;

"Minister" means the British Columbia Minister of Environment, or his or her delegate;

"Orphan Site" means a Contaminated Site determined under section 58 of the *Environmental Management Act* to be an orphan site;

"Permit" means a permit issued under section 19;

"Pollution" means the presence in the Environment of Substances including Hazardous Waste that substantially alter or impair the usefulness of the Environment;

"Preliminary Site Investigation" means a preliminary site investigation and report under section 41 of the *Environmental Management Act* that complies with the *Contaminated Sites Regulation*;

"Provincial Director" means a director of the British Columbia Ministry of Environment;

"Recyclable Material" means a product or Substance that has been diverted from disposal, and satisfies at least one of the following criteria:

- (a) is organic material from residential, commercial or institutional sources and is capable of being composted, or is being composted, at a site;
- (b) is managed as a marketable commodity with an established market by the owner or operator of a site;
- (c) is being used in the manufacture of a new product that has an established market or is being processed as an intermediate stage of an existing manufacturing process;
- (d) has been identified as a recyclable material in a Waste management plan;

"Responsible Person" means a person described in section 45 of the *Environmental Management Act*;

"Site Profile" means a site profile referred to in section 40 of the *Environmental Management Act*;

"Stream" means a natural source of Water supply, whether usually containing Water or not, and a lake, river, creek, spring, ravine, swamp and gulch, but does not include Groundwater;

"Substance" means any solid, liquid, gas, odour or organism or combination of any of them.

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“Voluntary Remediation Agreements” means a voluntary remediation agreement referred to in section 51 of the *Environmental Management Act*;

“Waste” includes

- (a) Hazardous Waste,
- (b) litter,
- (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 the Executive, or, if the Executive prescribes circumstances in which a Substance is a Waste, a Substance that is present in those circumstances;

“Water” includes Groundwater and ice;

“Works” includes

- (a) a drain, ditch and sewer,
- (b) a Waste disposal system including a sewage treatment plant, pumping station and outfall,
- (c) a device, equipment, Land and a structure that is used to
 - (i) measure, handle, transport, store, treat or destroy Waste or a Substance that is capable of causing Pollution, or
 - (ii) introduce into the Environment Waste or a Substance that is capable of causing Pollution,
- (d) an installation, plant, machinery, equipment, Land or a process that causes or may cause Pollution or is designed or used to measure or control the introduction of Waste into the Environment or to measure or control a Substance that is capable of causing Pollution, or
- (e) an installation, plant, machinery, equipment, Land or a process that is used to monitor or clean up Pollution or Waste.

Interpretation

5. (1) In addition to the terms defined in this Law, terms used in this Law may be defined in the *Interpretation Law*.

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(2) Only those defined terms that are capitalized in section 3 or in the *Interpretation Law* are presented capitalized in the text of the Law, and all other defined terms are presented in lower case.

Severability

6. The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

Validity

7. Nothing under this Law must be rendered void or invalid by
 - (a) an error or omission in a notice, form, permit or other document given or authorized under this Law; or
 - (b) a failure of the Tla'amin Nation, a Tla'amin Official or a Tla'amin Public Employee to do something within the required time.

Purpose of this Law

8. The purpose of this Law is to establish a comprehensive environmental management regime to protect human health and the quality of Water, Land and air on Tla'amin Lands through a system that governs the management of Waste, environmental emergencies, and Contaminated Sites.

Binding on Government

9. For certainty, this Law and the regulations bind the Tla'amin Government.

PART 2 - PROHIBITIONS AND AUTHORIZATIONS

Waste disposal

10. (1) For the purposes of this section, "the conduct of a prescribed industry, trade or business" includes the operation by any person of facilities or vehicles for the collection, storage, treatment, handling, transportation, Discharge, destruction or other disposal of Waste in relation to the prescribed industry, trade or business.
 - (2) Subject to subsection (5), a person must not introduce or cause or allow Waste to be introduced into the Environment in the course of conducting a prescribed industry, trade or business.
 - (3) Subject to subsection (5), a person must not introduce or cause or allow to be introduced into the Environment, Waste produced by a prescribed activity or operation.

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(4) Subject to subsection (5) and section 17(2), a person must not introduce Waste into the Environment in such a manner or quantity as to cause Pollution.

(5) Nothing in this section or in a regulation made under subsection (2) or (3) prohibits any of the following:

- (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;
 - (iii) a regulation;
- (b) the Discharge into the air of a Hazardous Waste from an incinerator or other emission source operated under an authority of a Permit issued by the Director of Lands and Natural Resources;
- (c) the disposition of human remains in accordance with a Tla'amin Nation enactment or provincial law;
- (d) the burning of leaves, 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 a Tla'amin Nation enactment, federal law or provincial law governing their use;
- (f) fires set or controlled by a person
 - (i) acting under an order of the Director of Lands and Natural Resources if the Director of Lands and Natural Resources orders the fires for training purposes,
 - (ii) carrying out fire control under section 9 of the *Wildfire Act* (British Columbia), or
 - (iii) 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;

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- (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.
 - (l) an owner, agent or manager from carrying out an activity related to mineral and coal exploration if that activity is exempted under a Tla'amin Nation enactment;
 - (m) the disposal of Hazardous Waste by a person
 - (i) by means of a system of Hazardous Waste disposal lawfully operated by the Tla'amin Nation, and
 - (ii) in compliance with the rules and regulations that apply to that system.
- (6) Nothing in section 10(5)(b) or 10(5)(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.

Exception does not apply

11. The exceptions set out in section 10(5) to the prohibitions set out in sections 10(2), 10(3) and 10(4) do not apply where a person Discharges Waste that the Inspector has reasonable grounds to believe is not usually associated with a Discharge from the excepted activity.

Confinement of Hazardous Waste

12. (1) A person who produces, stores, transports, handles, treats, recycles, deals with, processes or owns Hazardous Waste must keep the Hazardous Waste confined in accordance with the regulations.
- (2) Except to the extent expressly authorized by a Permit, an order, a Waste management plan or the regulations, a person must not release Hazardous Waste from the confinement required by subsection (1).

Hazardous Waste management Facility

13. A person must not construct, establish, alter, enlarge, extend, use or operate a Facility for the treatment, recycling, storage, disposal or destruction of Hazardous Waste except in accordance with the regulations.

Hazardous Waste storage and disposal

14. (1) A person must not store more than a prescribed amount of Hazardous Waste except in accordance with any of the following that apply:

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- (a) the regulations in relation to storing Hazardous Waste;
- (b) an order that requires the person to store that kind of Hazardous Waste; or
- (c) an approved waste management plan that provides for storage of Hazardous Waste.

(2) A person who is storing a quantity of a Substance at the time that the Substance is prescribed to be a Hazardous Waste does not contravene subsection (1) by continuing to store the same or a different quantity of that Substance if the person notifies the Director of Lands and Natural Resources, in accordance with the regulations, of the location, quantity and type of Substance that the person is storing.

(3) Despite subsection (2), the Director of Lands and Natural Resources may deliver in accordance with Tla'amin Nation law an order to comply with the regulations or an approved waste management plan to a person referred to in that section and, if the Director of Lands and Natural Resources does so and subject to subsection (4), the person must comply with the order within the period the Director of Lands and Natural Resources specifies in that order.

(4) If a person who is served with an order under subsection (3) does not comply with the regulations and an approved waste management plan in the period specified by the Director of Lands and Natural Resources, the person must dispose of the Hazardous Waste as directed by the Director of Lands and Natural Resources.

Transportation of Hazardous Waste

15. (1) A person who produces or stores Hazardous Waste

- (a) must not cause or allow more than a prescribed quantity of the Hazardous Waste to be transported from the property where he or she produces or stores the Hazardous Waste unless the person first
 - (i) completes, in the prescribed form and manner, the part of a manifest that applies to him or her, and
 - (ii) files the manifest in the prescribed manner,
- (b) must ensure that the person transporting more than the prescribed quantity of the Hazardous Waste from the place where it is produced or stored has a Permit for that purpose, and
- (c) must not cause or allow more than the prescribed quantity of the Hazardous Waste to be transported to a place unless
 - (i) an order, waste management plan or regulation authorizes or requires it to be stored at that place,
 - (ii) a Permit, order, waste management plan or regulation authorizes or requires it to be introduced into the Environment or treated at that place, or

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- (iii) storage of the Hazardous Waste at that place is otherwise not prohibited under section 14(1).
- (2) A person must not transport more than a prescribed quantity of a Hazardous Waste unless the person
 - (a) carries with him or her
 - (i) a manifest completed as required by section 15(1) and this subsection, and
 - (ii) if required by the regulations, a Permit, and
 - (b) has completed, in accordance with the regulations, that part of the manifest that applies to him or her.
- (3) A person must not accept delivery of more than a prescribed quantity of a Hazardous Waste unless the person
 - (a) receives from the transporter a manifest that has been completed as required by sections 15 (1) and 15(2),
 - (b) completes the part of the manifest that applies to him or her and files the manifest in the prescribed form and manner, and
 - (c) has a Permit authorizing the person to introduce into the Environment that kind and quantity of Hazardous Waste, is authorized under the regulations to treat or recycle that kind and quantity of Hazardous Waste or is not prohibited under section 14(1) from storing that kind and quantity of Hazardous Waste.
- (4) In a prosecution for a contravention of this section, the burden of proving compliance with section 15(1)(a) or (c) or with section 15(2) or 15(3) is on the defendant.

Packaging, product containers and disposable products

- 16.** A person must not use, offer for sale or sell packaging, product containers or disposable products, or any material used in packaging, product containers or disposable products, contrary to this Law or the regulations.

Littering

- 17. (1)** In this section, “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.
- (2) Notwithstanding section 10(4), a person must not throw down, drop or otherwise deposit, and leave litter in a public place.

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(3) The prohibition in subsection (2) does not apply if the depositing and leaving was authorized by a Tla'amin Nation law, or, was done with the consent of the owner, occupier or other person or authority having control of the public place.

(4) In a prosecution, the burden of establishing that subsection (3) applies is on the defendant.

Discharge of Waste from recreational vehicles and boats

18. A person must not Discharge domestic sewage or other Waste from a trailer, camper, transportable housing unit, boat or house boat onto Land, into any reservoir or into any lake, pond, Stream or other natural body of Water, except

(a) in compliance with a Permit, an order, a waste management plan or a regulation, 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

19. (1) The Director of Lands and Natural Resources may issue a temporary Permit authorizing the handling, treatment, transportation, storage and introduction of Waste into the Environment subject to requirements for the protection of the Environment that the Director of Lands and Natural Resources considers advisable and, without limiting that power, may do one or more of the following in the Permit:

(a) require the Permittee to repair, alter, remove, improve or add to Works or to construct new Works and to submit plans and specifications for Works specified in the Permit;

(b) require the Permittee to

(i) provide security, or

(ii) post a bond,

in the amount and form and subject to conditions the Director of Lands and Natural Resources specifies;

(c) require the Permittee to obtain and provide proof of insurance coverage in an amount and subject to conditions the Director of Lands and Natural Resources specifies;

(d) require the Permittee to provide an indemnification subject to the terms or conditions the Director of Lands and Natural Resources specifies;

(e) require the Permittee to monitor, in the manner specified by the Director of Lands and Natural Resources, the Hazardous Waste, the method of handling, treating, transporting, discharging and storing the Hazardous Waste and the places and

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things that the Director of Lands and Natural Resources considers will be affected by the Discharge of the Hazardous Waste or the handling, treatment, transportation or storage of the Hazardous Waste;

- (f) require the Permittee to conduct studies and to report information specified by the Director of Lands and Natural Resources in the manner specified by the Director of Lands and Natural Resources;
- (g) specify procedures for monitoring and analysis, and procedures or requirements respecting the handling, treatment, transportation, Discharge or storage of Hazardous Waste that the Permittee must fulfill; or
- (h) require the Permittee to recycle certain Hazardous Waste, and to recover certain reusable resources, including energy potential from Hazardous Waste.

(2) A Permit does not authorize the introduction of a Hazardous Waste into the Environment unless it specifies

- (a) the characteristics and quantity of Hazardous Waste that may be introduced, and
- (b) the term of the Permit.

(3) Despite section 19(1), the Director of Lands and Natural Resources may not issue or, subject to subsection (5), amend a Permit authorizing the introduction of Waste into the Environment if the introduction is governed by

- (a) a code of practice that is established in the regulations in relation to the industry, trade or business that applies for the Permit or amendment,
- (b) a code of practice that is established in the regulations in relation to the activity or operation in relation to which the Permit or amendment is applied for, or
- (c) a regulation, unless the regulation requires that a Permit be obtained in relation to the Discharge for the industry, trade, business, activity or operation.

(4) The term of a Permit must not exceed 12 months, unless otherwise authorized by a regulation or order from the Executive Council.

(5) The Director of Lands and Natural Resources, on receipt of an application or on his or her own initiative, may amend a Permit authorizing an introduction of Waste described in subsection (3)(a), (3)(b) or (3)(c) if

- (a) in the opinion of the Director of Lands and Natural Resources, the amendment is necessary for the protection of the Environment, or
- (b) the amendment is for one or more of the following purposes:
 - (i) a change of ownership or name;
 - (ii) a change of address;

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- (iii) a decrease in the authorized quantity of the Discharge, emission or stored Substance;
- (iv) an increase of not more than 10% in the authorized quantity of the Discharge, emission or stored Substance;
- (v) a change in the authorized quality of the Discharge, emission or stored Substance such that, in the opinion of the Director of Lands and Natural Resources, the change has resulted in or will result in an equal or lesser impact on the Environment;
- (vi) a change in a monitoring program;
- (vii) a change to the works, method of treatment or any other condition of a Permit such that, in the opinion of the Director of Lands and Natural Resources, the change has resulted in or will result in an equal or lesser impact on the Environment;
- (viii) any additional purpose authorized in writing by the Executive Council; or
- (ix) as prescribed in the regulations.

Amendment of Permits

20. (1) The Director of Lands and Natural Resources may, subject to section 19(1), this section, and any regulations or orders, for the protection of the Environment

(a) on the Director of Lands and Natural Resources' own initiative if he or she considers it necessary, or

(b) on application by a holder of a Permit,

amend the requirements of the Permit.

(2) The Director of Lands and Natural Resources' power to amend a Permit includes all of the following:

~~(a) authorizing or requiring the construction of new Works in addition to or instead of Works previously authorized or required;~~

(b) authorizing or requiring the repair of, alteration to, improvement of, removal of or addition to existing Works;

(c) requiring security, including posting bond, altering the security required or changing the type of security required or the conditions of giving security;

(d) requiring proof of insurance coverage, altering the amount of insurance coverage or changing the type of insurance coverage required or the conditions of providing proof of insurance coverage;

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- (e) requiring an indemnification, altering the indemnification required or changing the type of indemnification required or the conditions of giving an indemnification;
 - (f) extending or reducing the term of or renewing the Permit;
 - (g) authorizing or requiring a change in the characteristics or components of Waste Discharged, treated, handled, stored or transported;
 - (h) authorizing or requiring a change in the quantity of Waste Discharged, treated, handled, stored or transported;
 - (i) authorizing or requiring a change in the location of the Discharge, treatment, handling, storage or transportation of the Waste;
 - (j) altering the time specified for the construction of Works or the time in which to meet other requirements imposed on the holder of the Permit or;
 - (k) authorizing or requiring a change in the method of discharging, treating, handling, storing or transporting the Waste; and
 - (l) changing or imposing any procedure or requirement that was imposed or could have been imposed under a temporary Permit.
- (3) If the Director of Lands and Natural Resources amends a Permit, the Director of Lands and Natural Resources
- (a) may require that the holder of the Permit supply the Director of Lands and Natural Resources with plans, specifications and other information the Director of Lands and Natural Resources requests, and
 - (b) must deliver in accordance with Tla'amin Nation law a notice of the amendment to the holder of the Permit and publish in accordance with Tla'amin Nation law a notice of the amendment.
- (4) Despite subsection (3), the Director of Lands and Natural Resources may give the notice by electronic means to an address provided by the holder of the Permit.

Transfers of Permits

21. (1) A transfer of a Permit is without effect unless the Director of Lands and Natural Resources has consented in writing to the transfer.

(2) Despite subsection (1), the Director of Lands and Natural Resources may consent to a transfer by electronic means to an address provided by the holder of the Permit.

(3) For certainty, a Permit referred to in section 15(1) is not transferable.

Suspension or cancellation of Permits

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22. (1) Subject to this section, the Director of Lands and Natural Resources, by notice delivered in accordance with Tla'amin Nation law to the holder of a Permit may

- (a) suspend the Permit for any period, 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 Director of Lands and Natural Resources may exercise the authority under subsection (1) in any of the following circumstances:

- (a) a holder of a Permit
 - (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 two years;
- (b) a holder of a Permit fails to pay money owing to the Tla'amin Government under the Permit;
- (c) a holder of a Permit fails to comply with the terms of the Permit;
- (d) a holder of a Permit fails to comply with an order issued under this Law and related to the subject matter of the Permit;
- (e) a holder of a Permit or the holder'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 holder of a Permit fails to comply with any other requirements of this Law;
- (g) a Permit conflicts with or is replaced by a waste management plan approved by the Director of Lands and Natural Resources;
- (h) a Permit is replaced by a regulation;
- (i) a Permit is not, in the opinion of the Director of Lands and Natural Resources, in the interest of the Tla'amin Nation.

(4) In addition to the authority conferred by subsection (1), the Director of Lands and Natural Resources may, without notice to the holder,

- (a) suspend a Permit for the length of time requested if the holder requests that the Permit be suspended, or
- (b) cancel a Permit if the holder of the Permit

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- (i) dies,
- (ii) is a corporation that is liquidated, dissolved or otherwise wound up or is an extraprovincial company within the meaning of the *Business Corporations Act* (British Columbia) that has had its registration cancelled under Part 10 to 12 of that Act,
- (iii) is a partnership that is dissolved,
- (iv) requests that the Permit be cancelled, or
- (v) has given notice of abandonment under section 24(1).

(5) For certainty, a Permit that is suspended or cancelled is not a valid and subsisting Permit.

Variance orders

23. (1) If the Executive Council considers that a person should have temporary relief from a requirement of an order, a Permit, a code of practice or a waste management plan, the Executive Council may issue a variance order in relation to a requirement of the order, Permit, a code of practice or waste management plan.

(2) If the Director of Lands and Natural Resources issues a variance order, the Executive Council 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 in accordance with Tla'amin Nation law a notice of the variance order.

(3) Despite subsection (2), the Executive Council may

- (a) cancel a variance order, or
- (b) renew or extend a variance order.

Abandonment

24. (1) A person to whom a Permit has been issued, but who has not exercised any right under it to Discharge Waste, may abandon the Permit by sending or delivering to the Director of Lands and Natural Resources notice that the person elects to abandon the Permit.

(2) A person who elects under subsection (1) to abandon a Permit does not commit an offence merely because he or she has not complied with a requirement of the Permit.

(3) Subject to subsection (4), a person to whom a Permit has been issued and who has exercised a right under it to Discharge Waste may abandon the Permit by sending or

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delivering to the Director of Lands and Natural Resources notice that the person elects to abandon the Permit.

(4) A notice under subsection (3) is not effective until it is received by the Director of Lands and Natural Resources.

(5) A person who elects under subsection (3) to abandon a Permit

(a) does not commit an offence merely because after the abandonment became effective he or she has not complied with the requirements of the Permit, and

(b) despite the abandonment, is bound by those additional requirements that the Director of Lands and Natural Resources imposes respecting restoration of the Environment or the control and monitoring of the Waste Discharged or the Waste that continue to be Discharged after abandonment.

Written reasons

25. (1) Where the Director of Lands and Natural Resources refuses to issue a Permit or suspends a Permit, the Director of Lands and Natural Resources must provide written reasons for the refusal or suspension to the applicant or to the Permit holder as the case may be.

(2) The Director of Lands and Natural Resources must deliver, in accordance with section 35, notice of the refusal or suspension under subsection (1) and written reasons for the refusal or suspension.

Review

26. (1) A person whose application for a Permit is refused may, within 30 days of receiving notice of the refusal, request a review of that decision under the Administrative Decisions Review and Appeal Policy.

(2) A person whose Permit has been issued subject to conditions may, within 30 days of receiving the Permit, request a review of the conditions under Administrative Decisions Review and Appeal Policy.

(3) A person whose Permit has been suspended may, within 30 days of receiving notice of the suspension, request a review of the suspension under the Administrative Decisions Review and Appeal Policy.

(4) Within 30 days of the issuance of an order under this Law, a person may request a review of that order under Administrative Decisions Review and Appeal Policy.

Effect of review

27. (1) A review request of an order made under section 31(1) acts as a stay of the operation of that order.

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(2) A review request of an order made under section 32(1) or 34(1) does not act as a stay of the operation of that order.

Environmental Appeal Board

28. (1) Providing that the Environmental Appeal Board accepts jurisdiction or that there is an arrangement in place between the Tla'amin Nation and the government of British Columbia relating to the Environmental Appeal Board, the Environmental Appeal Board will conduct appeals related to the operation of PART 4 of this Law with the exception of the operation of section 38.

Regulations for the purposes of this Part

29. (1) Without limiting section 75, the Executive may make regulations as follows:

- (a) prescribing the form and content of manifests and the procedures for completing and filing manifests;
- (b) requiring the licensing of persons who transport Hazardous Waste or a specified class of Hazardous Waste and prohibiting the unlicensed transportation of Hazardous Waste or another specified class of Waste;
- (c) authorizing the issue, suspension, cancellation and amendment of Permits for the transportation of Hazardous Waste or another specified class of Waste;
- (d) regulating and restricting any activity, operation or industry that creates or produces Hazardous Waste or a specified class of Waste and requiring persons who operate any industry or process that creates or produces Hazardous Waste to register with the Director of Lands and Natural Resources;
- (e) prescribing industries, trades and businesses for the purpose of section 10(2);
- (f) prescribing activities, operations and classes of persons for the purpose of section 10(3);
- (g) regulating litter including the sale, return and reuse of beverage containers and packaging materials or classes of beverage containers and packaging materials which may
 - (i) require classes of persons to pay refunds in the amounts established for beverage containers,
 - (ii) require persons to accept empty beverage containers or classes of beverage containers and handle, store and transport beverage containers or classes of beverage containers received by them in the manner required, and
 - (iii) regulate the size, shape, features and composition of beverage containers and their packaging, labeling and use;

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- (h) requiring, on request of the Director of Lands and Natural Resources, that a person or a class of persons involved in the manufacture, distribution, sale, transportation or importation of empty or filled beverage containers of a prescribed type, or another person or association on behalf of the person or class of persons, supply information respecting the use, reuse and wastage of a prescribed type of beverage container;
- (i) respecting the minimum content of material derived from Recyclable Material that must be contained in types or classes of packaging and products sold on Tla'amin Lands;
- (j) prescribing packaging, product containers or products or classes of products for which a charge, including a deposit, handling fee, levy or core charge, must be paid or for which a refund must be given, and prescribing the amount of the charge or refund and the circumstances in which the charge or refund applies; requiring the use of standardized definitions, terms, logos, symbols and other representations on packaging, and prescribing those definitions, terms, logos, symbols and other representations;
- (k) prohibiting or restricting the use of packaging or classes of packaging or product containers or classes of product containers;
- (l) prescribing the content, shape, weight, nature and volume of packaging used per unit of product for the purposes of section 16;
- (m) implementing a code of practice in relation to a industry, trade, business, activity or operation;
- (n) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and implement a Waste reduction and prevention plan for packaging, product containers or any other material or Substance, and prescribing the contents of the plan;
- (o) requiring prescribed industrial, commercial and institutional operations or classes of operations to develop and maintain an infrastructure for the reuse or recycling of packaging, product containers or any other material or Substance;
- (p) requiring prescribed industrial, commercial and institutional operations or classes of operations to conduct periodic packaging or other Waste audits, and prescribing the terms and conditions of the audits, including to whom reports should be made and other reporting requirements; or
- (q) requiring a person who manages Hazardous Waste or introduces Waste into the Environment, other than in accordance with a Permit under section 19(1),
 - (i) to give security, including in the form of a bond,
 - (ii) provide proof of insurance coverage,
 - (iii) provide an indemnification,

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in the amount and form and subject to the conditions the Executive may specify; or

- (r) prescribing the contents of a waste management plan to guide the management of Waste including Recyclable Material or other class of Waste.

PART 3 - ENVIRONMENTAL EMERGENCIES

Environmental emergency

30. Where a Discharge of a Hazardous Waste into the Environment in contravention of this Law or a Permit occurs or a reasonable likelihood of such a Discharge exists, every person causing or contributing to the Discharge or increasing the likelihood of such a Discharge, and the owner or the person in charge, management or control of the Hazardous Waste before its Discharge or likely Discharge, must immediately

- (a) subject to any regulations, report the Discharge or likely Discharge to the Director of Lands and Natural Resources;
- (b) 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
- (c) make a reasonable effort to notify every member of the public who may be adversely affected by the Discharge or likely Discharge.

Protection order

31. (1) Where the Director of Lands and Natural Resources believes on reasonable grounds, that it is necessary or advisable for the protection of the Environment to do so, the Director of Lands and Natural Resources may issue an order directed to any person requiring that person

- (a) to install safeguards to prevent the Discharge of Hazardous Waste into the Environment,
- (b) to site, transport or store any Hazardous Waste in the manner set out in the order, or
- (c) to have on hand at all times the equipment and material necessary to alleviate the effect of any Discharge of Hazardous Waste that may be specified in the order.

(2) Where an Inspector believes on reasonable grounds that a Discharge of a Hazardous Waste in contravention of this Law or a Permit is likely to occur, the Inspector may issue an order requiring any person whose actions may increase the likelihood of a Discharge or the owner or person in charge, management or control of the Hazardous Waste to take the preventive measures that the Inspector considers necessary.

Order of Inspector

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32. (1) Where an Inspector believes on reasonable grounds that a Discharge of a Hazardous Waste in contravention of this Law or a Permit has occurred or is occurring, the Inspector may issue an order requiring any person causing or contributing to the Discharge or the owner or the person in charge, management or control of the Hazardous Waste to stop the Discharge by the date specified in the order.
- (2) Where a person Discharges or permits the Discharge of a Hazardous Waste into the Environment, and immediate action is required, an Inspector may issue an order for that person to repair or remedy any injury or damage to the Environment that results from the Discharge.
- (3) The Director of Lands and Natural Resources will notify a Provincial Director upon issuing an order under subsection (2).
- (4) The Director of Lands and Natural Resources must, within a reasonable time, provide notice of the subsection (2) order in registerable form in the Tla'amin lands registry and the provincial land title office.
- (5) For certainty, the issue of an order under this section does not preclude the application of Part 4 of this Law or the prosecution of an offence under section 54(1).

Director of Lands and Natural Resources may remediate

33. (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 32(2) or where immediate remedial measures are required to protect the Environment, the Director of Lands and Natural Resources may, at that person's own expense, cause to be carried out the measures that the Director of Lands and Natural Resources considers necessary to repair or remedy an injury or damage to the Environment that results from any Discharge.
- (2) If the Director of Lands and Natural Resources certifies that money is required for immediate remedial measures to protect the Environment, the amount the Director of Lands and Natural Resources certifies to be required may be paid out of the Tla'amin Government's consolidated revenue fund or other similar fund.
- (3) A certificate signed by the Director of Lands and Natural Resources showing an amount of money expended by the Tla'amin Government under this section is conclusive as to the amount expended.
- (4) An amount shown by a certificate referred to in subsection (3) is a debt due to the Tla'amin Government and subject to subsection (5), is recoverable, by action in the British Columbia Supreme Court from any person whose act or omission caused or who authorized the events that caused the injury or damage to the Environment in proportions the Court determines.
- (5) If the Court is satisfied that the expenditure incurred by the Tla'amin Government under this section was either
- (a) excessive, taking into consideration the magnitude of the emergency and the results achieved by the expenditure, or

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(b) unnecessary, taking into consideration the unlikelihood of significant material loss to any person had the government not acted under this section,

the Court may reduce or extinguish the amount of the judgment that it otherwise would have ordered be entered against the person against whom the action has been brought.

(6) For the purposes of subsection (4), 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

34. (1) Despite section 35, where, in the opinion of an Inspector, an emergency exists and an order must be issued under section 31(1) or 32(1), the Inspector may issue a verbal or written order to the person who, in the opinion of the Inspector, is the person 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 35 as soon as is practicable after it is issued.

Service of orders

35. An order referred to in section 31(1) or 32(1) must be delivered in accordance with Tla'amin Nation law.

PART 4 - CONTAMINATED SITE REMEDIATION

Application of the Environmental Management Act

36. (1) Subject to subsections (2) and (3), Part 4 of the *Environmental Management Act*, and all provincial regulations enacted to give effect to that Part, apply on Tla'amin Lands to the effect that British Columbia may determine a site on Tla'amin Lands is a Contaminated Site and may make decisions regarding liability for remediation and the implementation of remediation of Contaminated Sites.

(2) Subsections 52(2)(g), 55(9), and sections 57, and 61 of the *Environmental Management Act* do not apply on Tla'amin Lands.

(3) The references to municipalities at

(a) sections 40, 44, and 47 of the *Environmental Management Act*, and

(b) sections 2, 3, 4, 6, 7, 9, paragraph 44(a)(i) and subsection 52(2) in the *Contaminated Sites Regulation*,

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shall be interpreted to apply to the Tla'amin Nation.

Information sharing with the Director of Lands and Natural Resources

37. Subject to provincial legislation, policies and any agreements between the Tla'amin Nation and British Columbia, a Provincial Director will provide to the Director of Lands and Natural Resources copies of the following:

- (a) all Site Profiles, Preliminary Site Investigations and Detailed Site Investigations that the Provincial Director receives related to Contaminated Sites on Tla'amin Lands,
- (b) all orders, Voluntary Remediation Agreements and decisions, including determinations under section 44(3) of the *Environmental Management Act* made by the Provincial Director that apply to Tla'amin Lands,
- (c) notifications under section 54 of the *Environmental Management Act* respecting independent remediation,
- (d) declarations and orders made by the Minister under section 58 of the *Environmental Management Act* related to Orphan Sites on Tla'amin Lands, and
- (e) other information required by the regulations.

Tla'amin's determination of Contaminated Sites

38. If the Provincial Director fails to make a determination that a site is a Contaminated Site pursuant to section 44 of the *Environmental Management Act*, and the Director of Lands and Natural Resources, upon reviewing the site information provided by the Provincial Director pursuant to section 37 [information sharing with the Director of Lands and Natural Resources], believes the site is a Contaminated Site, the Director of Lands and Natural Resources may determine a site is a Contaminated Site and may make decisions, including determinations, and orders regarding liability for remediation and the implementation of remediation as prescribed in the regulations.

Registration in the Lands Registry

39. Director of Lands and Natural Resources' receipt of the information under section 37, the Director of Lands and Natural Resources must, within a reasonable time, provide notice of

- (a) all orders, Voluntary Remediation Agreements and decisions, including determinations under subsection 44(3) of the *Environmental Management Act* made by the Provincial Director that apply to Tla'amin Lands,
- (b) all declarations and orders made by the Minister under section 58 of the *Environmental Management Act* related to Orphan Sites on Tla'amin Lands, and
- (c) all decisions, including determinations, and orders made by the Director of Lands and Natural Resources under section 38

in registerable form in the Tla'amin Lands and Interests File Registry.

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Persons responsible for remediation of Contaminated Sites

40. The term "previous owner or operator of the site" referred to in paragraphs 45(1)(b) and 45(2)(b) of the *Environmental Management Act* includes British Columbia, as holder of the provincial Crown Land that was transferred to the Tla'amin Nation pursuant to the Tla'amin Final Agreement.

Contaminated soil relocation

41. If a Provincial Director enters into a Contaminated Soil Relocation Agreement pursuant to section 55 of the *Environmental Management Act*, the Provincial Director must provide notice of the agreement to the Tla'amin Nation.

Consultation with Tla'amin Citizens

42. If the Provincial Director orders a Responsible Person provide for public consultation on a proposed remediation or a public review of remediation activities pursuant to section 52 of the *Environmental Management Act* (British Columbia), the Provincial Director will consider opportunities for involvement with Tla'amin Citizens provided by any Tla'amin development approval process, including under the *Subdivision, Development and Servicing Law*.

Immunity in relation to Contaminated Sites

43. (1) In subsection (2), "Protected Person" means

- (a) the Tla'amin Government,
- (b) a current or former elected official of the Tla'amin Government,
- (c) the Minister,
- (d) a current or former approving officer,
- (e) a current or former employee or agent of the British Columbia government,
- (f) a current or former elected official of the British Columbia government,

(2) Subject to subsection (4), no action lies and no proceedings may be brought against a Protected Person because of

- (a) any
 - (i) act, advice, including pre-application advice, or recommendation, or
 - (ii) failure to act, failure to provide advice, including pre-application advice, or failure to make recommendations

in relation to this Part and regulations under this Part, or

(3) any

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(a) purported exercise or performance of powers, duties or functions, or

(b) failure to exercise or perform any powers, duties or functions

arising under this Part and regulations under this Part.

(4) Subsection (2) does not provide a defence if, in relation to the subject matter of the action or proceedings,

(a) the Protected Person is designated a Responsible Person, or

(b) the conduct of the Protected Person was dishonest, gross negligence, malicious, or willful misconduct.

(5) Without limiting subsection (2), if the Tla'amin Government, or its employees, officers or elected officials, relies honestly and without malice or wilful misconduct on the contents of

(a) a preliminary determination or final determination,

(b) a Certificate Of Compliance, or

(c) an Approval In Principle,

produced pursuant to the *Environmental Management Act*, those Protected Persons are not liable for damages arising from reliance on the determination, approval or certificate.

Contaminated Site regulations

44. (1) Without limiting the Executive's authority to make regulations pursuant to section 75, the Executive may prescribe Substances and risk based or numerical criteria, standards and conditions related to Contaminated Sites.

(2) For greater certainty, the Executive may prescribe Substances and risk based or numerical criteria, standards and conditions that exceed the levels prescribed in the *Environmental Management Act* and the associated regulations.

Environmental Appeal Board

45. (1) Subject to subsection (2), Part 8 of the *Environmental Management Act* and all provincial regulations enacted to give effect to that Part applies to authorize the Environmental Appeal Board to hear all appeals that arise under this Part.

(2) Subsections 95(4) and 95(5) of the *Environmental Management Act* do not apply on Tla'amin Lands.

(3) If a person or body given full party status under subsection 94(2) of the *Environmental Management Act* is an agent or representative of the Tla'amin Government,

(a) an order under subsection 95(2) of the *Environmental Management Act* may not be made for or against the person or body, and

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- (b) an order under subsection 95(2) (a) of the *Environmental Management Act* may be made for or against the Tla'amin Government.

PART 5 - ADMINISTRATION

Authority of the Director of Lands and Natural Resources

46. The duties and powers of the Director of Lands and Natural Resources extend to any matter relating to the management, protection and enhancement of the Environment, including the following matters:

- (a) planning, research and investigation in relation to the Environment;
- (b) development of policies for the management, protection and use of the Environment;
- (c) planning, design, construction, operation and maintenance of Works and undertakings for the management, protection or enhancement of the Environment;
- (d) providing information to Tla'amin Citizens about the quality and use of the Environment;
- (e) preparing and publishing policies, strategies, objectives, guidelines and standards for the protection and management of the Environment; and
- (f) preparing and publishing environmental management plans for specific areas of Tla'amin Lands which may include measures in relation to the following:
 - (i) flood control, flood hazard management and development of Land that is subject to flooding;
 - (ii) drainage;
 - (iii) soil conservation;
 - (iv) Water resource management;
 - (v) fisheries and aquatic life enhancement initiatives;
 - (vi) wildlife management enhancement initiatives;
 - (vii) Hazardous Waste management; and
 - (viii) air quality management over Tla'amin Lands.

Delegation authority

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47. (1) The Executive may delegate to the Director of Lands and Natural Resources, in writing, the performance of any of the Executive's duties or the exercise of any of the Executive's powers under this Law, except the powers set out in sections 52(1), 53(1) and 75.

(2) Despite the delegation of any duties or powers under subsection (1), the Executive remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately by the Director of Lands and Natural Resources.

(3) Upon the written approval of the Chief Administrative Officer, the Director of Lands and Natural Resources may delegate the performance of any of his or her duties or the exercise of any of his or her powers, other than the performance of the duties or the exercise of powers delegated to the Director of Lands and Natural Resources by the Executive under subsection (1), to

- (a) The Chief Administrative Officer,
- (b) another Tla'amin Nation senior director,
- (c) a Tla'amin Government employee, or
- (d) an independent contractor of the Tla'amin Nation.

(4) Despite the delegation of any duties or powers under subsection (3), the Director of Lands and Natural Resources remains responsible for ensuring that the duties are performed properly and the powers are exercised appropriately.

Additional duties and powers of the Director of Lands and Natural Resources

48. In addition to the duties and powers of the Director of Lands and Natural Resources under section 46, the Director of Lands and Natural Resources may

- (a) perform any of the duties or exercise any of the powers of an Inspector appointed under section 49(1),
- (b) establish, operate and maintain stations to monitor the quality of the Environment of Tla'amin Lands,
- (c) conduct research studies, conferences and training programs relating to Hazardous Waste and to the preservation, protection or enhancement of the Environment,
- (d) engage the services of experts or persons having special technical or other knowledge to advise the Director of Lands and Natural Resources or to inquire into and report to the Director of Lands and Natural Resources on matters within the jurisdiction of the Director of Lands and Natural Resources,
- (e) develop, co-ordinate and administer policies, standards, guidelines and codes of practice relating to the preservation, protection or enhancement of the Environment,
- (f) collect, publish and distribute information relating to Hazardous Waste and to the preservation, protection or enhancement of the Environment, and

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- (g) compile and study information directly or indirectly related to matters pertaining to the preservation, protection or enhancement of the Environment for the purpose of using the results to exercise his or her powers under this Law.

Inspectors

- 49. (1) The Director of Lands and Natural Resources may appoint Inspectors and must specify in the appointment the duties that may be performed and the powers that may be exercised by the Inspector under this Law.
- (2) Every enforcement officer appointed under the *Tla'amin Fish, Wildlife and Migratory Birds Law* and the *Tla'amin Enforcement and Ticketing Law* is an Inspector by virtue of his or her office.
- (3) Every Inspector must be furnished with identification in a form approved by the Director of Lands and Natural Resources, and on entering any place or vehicle under this Law, must, if so requested by the owner or person in charge, produce that identification.

Powers and liabilities of Inspectors

- 50. (1) An Inspector appointed under section 49(1) must perform the duties and may exercise the powers of his or her appointment.
- (2) Subject to section (4), 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 Tla'amin Lands without being liable for trespass.
- (3) A person who is subject to an order may enter and pass over any Tla'amin Lands without being liable for trespass when the trespass is necessary for compliance with the order.
- (4) An Inspector or other person referred to in sections (2) and (3) who enters and passes over Tla'amin Lands under the authority of that subsection is liable for damages to the Land resulting from his or her activities.
- (5) Sections (2) and (4) apply to any person who is assisting an Inspector.

Agreements

- 51. The Executive may enter into agreements with a Government Body, or with any person, institution, organization or firm respecting the administration and enforcement of
 - (a) this Law, or
 - (b) any enactment of British Columbia relating to the preservation, protection or enhancement of the Environment.

Committees

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- 52.** (1) The Executive may establish committees or other bodies to provide advice relating to the preservation, protection or enhancement of the Environment.
- (2) Where the Executive establishes a body under section 52(1), the Executive may
- (a) appoint the members,
 - (b) establish the term of office of the members,
 - (c) designate a chairperson, vice-chairperson and secretary for the body,
 - (d) provide for the remuneration of the members of the body for their services and allowances for traveling and other expenses, and
 - (e) authorize the body to hire and establish remuneration for experts.
- (3) The Executive must specify the duties that the body established under section 52(1) is to perform and the manner in which the duties are to be performed at the time the committee is established.

Public inquiry

- 53.** (1) The Executive may, by order, direct that a public inquiry be held where a Discharge of a Hazardous Waste has resulted in
- (a) injury or death to any person,
 - (b) danger or potential danger to the health or safety of the public, or
 - (c) significant damage to property or the Environment.
- (2) The Executive may appoint persons to conduct the inquiry.
- (3) Where a person appearing before a public inquiry refuses to comply with a requirement of the public inquiry, the Executive may, by its own application or as a party to a proceeding, apply to the British Columbia Supreme Court for an order compelling compliance with the requirement of the public inquiry.

PART 6 - OFFENCES

Offences

- 54.** (1) A person who contravenes section 10(1), or fails to comply with an order made under section 32(1) or 34(1), commits an offence and is liable on summary conviction
- (a) If the offence is committed negligently, for a first offence,
 - (i) to a fine not exceeding \$100,000, or

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- (ii) to imprisonment for a term not exceeding two months,
 - (b) if the offence is committed knowingly, for a first offence,
 - (i) to a fine not exceeding \$200,000, or
 - (ii) to imprisonment for a term not exceeding four months, and
 - (c) for each subsequent offence, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months.
- (2) Every person who fails to comply with the terms of an order made under section 31(1) commits an offence and is liable, on summary conviction, to a fine not exceeding \$100,000.
- (3) Every person who contravenes this Law or a Permit, other than a provision referred to in subsection (1) or (2), commits an offence and is liable, on summary conviction, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months.

Orders of Court

- 55.** Where a person has been convicted of an offence under this Law, in addition to any other punishment that may be imposed under this Law, the Court may make an order with one or more of the following terms:
- (a) prohibiting the person from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
 - (b) directing the person to take any action at the person's expense that the Court considers appropriate to remedy any harm to the Environment that results or may result from the act or omission that constituted the offence;
 - (c) directing the person to take any action that the Court considers appropriate to avoid any harm to the Environment that may result from the act or omission that constituted the offence;
 - (d) directing the person to publish, in the manner determined by the Court, the facts relating to the offence;
 - (e) directing the person to notify, at his or her own cost and in a specified manner, any person aggrieved or affected by the person's conduct of the facts relating to the offence;
 - (f) directing the person to post a bond or pay an amount of money into Court that will ensure compliance with any order made under this section;
 - (g) cancelling or suspending any Permit issued under this Law;
 - (h) directing the person to pay the cost of any research or analysis related to the prosecution of the offence; and

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- (i) any further terms the Court considers appropriate in the circumstances, including requiring the offender to comply with any other reasonable conditions that the Court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the offence or committing other offences under this Law.

Continuing offences

- 56. Every contravention of this Law or failure to comply with the terms of an order or notice made or given under this Law is a continuing offence and a separate information may be laid for each day the offence continues, and the punishment provided for in section 54 applies for each conviction resulting from the laying of each information.

Further prosecutions

- 57. 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.

Where prosecution not barred

- 58. Nothing in section 31(1), 32(1), or 34(1) prohibits a prosecution for contravening section 10(1).

Proof of offence

- 59. 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

- 60. (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 section 60 whether or not the corporation has been prosecuted for or convicted of the offence.

Defence

- 61. No person may be convicted of an offence under this Law if the person establishes that he or she exercised all due diligence to prevent that offence.

Limitation

- 62. Proceedings in relation to an offence under this Law may be instituted at any time within six years after the day on which the Director of Lands and Natural Resources became aware or ought to have become aware of the subject matter of the proceedings.

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Order is proof

63. An order purporting to be signed by the Director of Lands and Natural Resources, an Inspector, or a Provincial Director or Minister under Part 4 of this Law, or a certified copy of the order, is admissible in evidence in an action, prosecution or other proceeding and, in the absence of evidence to the contrary, the document is proof of the statements contained in it without proof of the signature or of the official character of the person appearing to have signed it.

PART 7 - OTHER REMEDIES

Administrative Penalties

64. (1) Subject to the regulations, if a director is satisfied on a balance of probabilities that a person has
- (a) contravened a prescribed provision of this Law or the regulations,
 - (b) failed to comply with an order under this Law, or
 - (c) failed to comply with a requirement of a permit or approval issued or given under this Law,

the Director may serve the person with a determination requiring the person to pay an administrative penalty in the amount specified in the determination.

(2) A determination under subsection (1) must be in the prescribed form and contain the prescribed information.

(3) A penalty imposed under this section must be paid within the prescribed time.

(4) Before the date an administrative penalty under this section is due, the Director may, subject to the regulations, enter into an agreement with the person who is liable for the penalty.

(5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the Director considers necessary or desirable.

(6) An agreement under subsection (4) must specify the time for performing the terms and conditions and if the person fails to perform those terms and conditions by the date specified, the penalty specified in the notice under subsection (1) is due and payable on that date.

(7) Neither the Director's decision whether to enter into an agreement nor the terms and conditions of an agreement under subsection (4) may be appealed or reviewed

(8) If the Director issues an administrative penalty notice to a person in respect of a contravention or failure referred to in subsection (1), a prosecution for an offence under this Law in respect of the same contravention or failure may not be brought against the person.

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(9) If a corporation contravenes this Law or a regulation or fails to comply with an order, permit or approval as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays an administrative penalty.

Injunction

65. (1) Where, on the application of the Director of Lands and Natural Resources, it appears to a judge of the British Columbia Supreme Court that a person has done or is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under this Law, the judge may issue an injunction ordering any person named in the application

(a) to refrain from doing any act or thing that it appears to the judge may constitute or be directed toward the commission of an offence under this Law, or

(b) to do any act or thing that it appears to the judge may prevent the commission of an offence under this Law.

(10) Subject to subsection (11), no injunction may be issued under subsection (1) unless the party or parties named in the application have been served in accordance with section 35 with 48 hours notice.

(11) Subsection (10) does not apply if the urgency of the situation is such that service of notice would not be in the public interest.

Joint and several liability for costs and expenses

66. (1) The Tla'amin 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 Tla'amin Government may claim and recover expenses from two or more persons under section 0(10), the expenses may be recovered jointly and severally 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 Tla'amin Government.

Request for records

67. (1) The Director of Lands and Natural Resources may, in writing, require that, within a specific time, any records that are required to be maintained for the purposes of this Law be

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provided to the Director of Lands and Natural Resources 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.

Authority to enter land

68. Despite any other Tla'amin Law, an Inspector performing duties under this Law may

- (a) enter any land, whether enclosed or not;
- (b) enter any structure, including if the Inspector has a warrant authorizing the entry, a structure or a part of a structure used solely as a private residence,

but, at the request of the owner or occupier of the land or structure, the Inspector must provide proof of identify.

Inspections

69. (1) For the purposes of determining whether there is compliance with this Law or a Permit, an Inspector may, at any reasonable time, without a warrant, enter land or premises, except premises occupied solely as a private residence, at any reasonable time and inspect any process, works or activity that

- (a) produces or is capable of producing Waste;
- (b) causes or is capable of causing Pollution; or
- (c) is used for the storage, handling, treatment, destruction or disposal of Waste.

(2) An Inspector may exercise powers under this Part in respect of premises used as a private residence only

- (a) with the consent of the occupant;
- (b) under the authority of a warrant under subsection (4) or another Tla'amin Law; or
- (c) if the conditions for obtaining a warrant exist but because of exigent circumstances it is not practicable to obtain the warrant.

(3) For the purpose of subsection (1)(c), "**exigent circumstances**" means circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

(4) If satisfied by evidence on oath that access to premises or a part of premises, used solely as a private residence, is necessary for the purposes of this Law, a justice may issue a warrant authorizing a person named in the warrant to enter the premises and conduct an inspection.

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(5) A justice may authorize a peace officer to enforce the terms of a warrant under subsection (4).

(6) An Inspector who enters on land or premises under section 69(1) with consent under subsection (2)(a), or an Inspector or peace officer who enters land or premises under a warrant under subsection (2)(b), may do any of the following:

- (a) inspect, analyze, measure, sample or test land, and any article, Substance or Waste located on or in the land, and premises to ascertain
 - (i) whether Pollution is present,
 - (ii) the quantity of Waste produced, treated, stored, handled, transported or discharged, or
 - (iii) the characteristics of Waste produced, treated, stored, handled, transported or discharged;
- (b) take away samples of land, articles, Substances or Waste;
- (c) examine and take away copies of records relating to
 - (i) the production, treatment, storage, handling, transportation and discharge of Waste, and
 - (ii) the characteristics of the Waste produced, treated, stored, handled, transported or discharged;
- (d) require that anything related to the production, treatment, storage, handling, transportation or discharge of Waste be operated, used or set in motion under conditions specified by the Inspector or peace officer;
- (e) use a computer system at the place that is being inspected to examine data, contained in or available to the computer system, related to the production, treatment, storage, handling, transportation or discharge of Waste;
- (f) record or copy by any method any information related to the production, treatment, storage, handling, transportation or discharge of Waste;
- (g) use any machine, structure, material or equipment in the place that is being inspected as is necessary to carry out the inspection;
- (h) use copying equipment located at the place that is being inspected to make copies to take away;
- (i) take photographs or make audio or video records.

(7) An Inspector or peace officer who enters land or premises in accordance with subsections (1) to (6)

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- (a) may take with him or her the persons and equipment that may be necessary for the purposes of the inspection; and
- (b) on request, must provide proof of identity to a person present on the land or premises entered.

(8) A person who is or was a director, receiver, receiver manager, officer, employee, banker, auditor or agent of a person who is the subject of an inspection under this section must, on request of the Inspector or peace officer,

- (a) produce, without charge or unreasonable delay, for examination by the Inspector or peace officer
 - (i) any approval, order, Permit or waste management plan related to waste produced, treated, stored, handled, transported or discharged on or from the land or premises, and
 - (ii) any other record that touches on any matter relating to the production, treatment, storage, handling, transport or discharge of Waste on or from the land or premises, and
- (b) provide the Inspector or peace officer with information relevant to the purposes of the inspection.

Inspection of vehicles

70. (1) For the purposes of ensuring compliance with this Law or the regulations, including with a Permit, order, waste management plan or approval, if an Inspector has reasonable grounds for believing that a vehicle is being used for the transportation or handling of Waste, the Inspector may, at any reasonable time,

- (a) require a person operating the vehicle to stop the vehicle and provide identification; and
- (b) carry out an inspection in accordance with subsections (1) to (4);
- (c) when requested or signalled to do so by a person who is readily identifiable as an Inspector, the operator of a motor vehicle must immediately
- (d) stop the vehicle; and
- (e) provide identification and the information that the Inspector considers necessary to determine whether this Law and the regulations are being complied with.

(2) For the purposes of carrying out an inspection of a vehicle under subsections (1) to (4), an Inspector may

- (a) require that any compartment of the vehicle or any container in or on the vehicle be opened; and

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(b) exercise any of the powers under section 69(6).

(3) If, as a result of an inspection or a test carried out under subsections (1) to (4), it appears to the Inspector that the vehicle is transporting Hazardous Waste in a manner that creates a risk of harm to the public or the environment, the Inspector may require the driver to drive the vehicle to a place the Inspector specifies and the Inspector may do one or more of the following:

(a) order one or more of the following persons to deal with the Hazardous Waste in accordance with the Inspector's directions:

(i) the owner of the Hazardous Waste;

(ii) the person operating the vehicle;

(iii) the owner of the vehicle;

(b) seize and dispose, a manner that is appropriate,

(i) the Hazardous Waste, and

(ii) any package or container holding the Hazardous Waste;

(c) detain the vehicle for any period that the Inspector considers necessary in order to exercise his or her powers under paragraphs (a) and (b).

(4) The owner of the Hazardous Waste, package or container and the owner of the vehicle that was transporting the Hazardous Waste, package or container are jointly and separately liable to the Tla'amin Government for the cost of disposing of the Hazardous Waste, package or container under section (3)(3)(b), and that cost is recoverable from them by the Tla'amin Government as a simple contract debt.

Seizure and prevention orders during the course of an inspection

71. (1) Where, during the course of an inspection under this Part, an Inspector has reasonable grounds to believe that any provision of this Law or a Permit has been contravened, the Inspector may

(a) order a person to do anything the Inspector considers necessary to stop the contravention or prevent another contravention; and

(b) seize anything validly inspected by the Inspector that the Inspector believes on reasonable grounds

(i) was used or is being used in the contravention, or

(ii) will afford evidence of the contravention.

(2) Subject to sections 4.9 and 4.10 of the Tla'amin *Enforcement and Ticketing Law*, sections 23(4) and 24 to 24.2 of the *Offence Act* apply in respect of anything seized under

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section 71, and for the purposes of section 23(4) of the *Offence Act*, an Inspector is deemed to be a peace officer.

(3) Compensation is not payable by the Tla'amin Government in respect of anything lawfully seized, detained or destroyed under this Law.

(4) Sections 23 to 24.2 of the *Offence Act* do not apply in relation to anything taken in the course of an inspection under sections 69(6) to 70(4) of this Law unless subsection (1) applies.

Disposition of items seized pursuant to a search warrant

72. The forms referred to in section 21 of the *Offence Act* (British Columbia), and, subject to sections 4.9 and 4.10 of the *Tla'amin Enforcement and Ticketing Law* (British Columbia), sections 22 to 24.2 of the *Offence Act* (British Columbia), apply to a warrant granted under this Part, and to a search and anything seized by an Inspector under sections 69(2)(c) or 71(2) of this Law.

Period of Detainment

73. If, under section 24(2)(a) of the *Offence Act* (British Columbia), a justice orders that something referred to in section 74 be detained, despite section 24(3) of the *Offence Act* (British Columbia), the thing may be detained for up to one year before an order under section 24(5) of that Act, authorizing its continued detention, is required.

Restrictions on returning certain seized things

74. Despite sections 71(2), 72 and 73, if the Director considers that a thing seized under this Part is

- (a) a Hazardous Waste or considered to be an environmental hazard, it must not be returned and the person claiming it is not entitled to compensation; or
- (b) to be contaminated by a Hazardous Waste, it must not be returned unless it is decontaminated at the expense of the person entitled to it.

PART 8 - GENERAL PROVISIONS

Regulations

75. Subject to section 76, the Executive may make regulations which it considers necessary or advisable for the purposes of this Law, including.

- (a) prescribing any matter that may be prescribed under this Law,
- (b) prescribing a Substance as a Waste and prescribing circumstances in which a Substance is a Waste,

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- (c) respecting Waste or the concentration of Waste or classes of Waste that may or may not be Discharged into the Environment,
- (d) respecting the maximum permissible concentration of a Waste or class of Waste in the Environment,
- (e) prescribing a Substance as a Hazardous Waste,
- (f) respecting acceptable levels of Hazardous Waste within other Substances,
- (g) respecting the reporting of Discharges of Waste or classes of Waste or the likely Discharge of Waste or classes of Waste,
- (h) respecting the methods for sampling and analyzing Waste or classes of Waste,
- (i) respecting the methods for sampling and analyzing the rate of emission of a Waste or class of Waste into the Environment,
- (j) respecting the manufacture, use, installation, removal or modification of equipment designed to control the release of Waste or class of Waste,
- (k) categorizing Waste or classes of Waste,
- (l) respecting the design, construction, identification, siting and operation of disposal sites for Waste or classes of Waste,
- (m) respecting the requirements for the identification, storage, handling, Discharge, transport or use of Waste or classes of Waste,
- (n) respecting methods of collection, treatment, distribution, recycling, reuse or disposal of Waste or classes of Waste,
- (o) requiring the keeping of and allowing the inspection of records;
- (p) creating classes of Permits,
- (q) respecting the requirements for the application, issuing, refusal and suspension of Permits and public participation relating to this subject matter,
- (r) respecting procedures relating to appeals and public participation relating to appeals,
- (s) respecting the measures required and the standards to be met for the remedy or repair of any injury or damage to the Environment,
- (t) respecting the material and equipment required to be on hand to alleviate the effect of any Discharge of Waste or classes of Waste,
- (u) respecting the safeguards required to prevent the Discharge of Waste or classes of Waste,

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- (v) prescribing the contents of forms to be used under this Law,
- (w) prescribing fees to be charged under this Law, and
- (x) respecting any other matter necessary to carry out the purposes and provisions of this Law.

Publication of proposed regulation

76. Subject to section 77, the Executive must publish in accordance with Tla'amin Nation law at least 90 days before the proposed effective date of a regulation, a copy of every regulation that the Executive proposes to make under subsections 75(p), 75(q) and 75(r) and a reasonable opportunity must be afforded to interested persons to make representations in relation to the regulation.

Exceptions

77. The Executive is not required to publish a proposed regulation if the proposed regulation

- (a) has been published in accordance with section 76 whether or not it has been amended as a result of representations made by interested persons as provided in that section; or
- (b) makes no material substantive change in an existing regulation.

Amendments to this Law

78. This Law may be amended by the Legislative Assembly in accordance with the *Constitution of the Tla'amin Nation*, the *Government Law* and any other applicable laws.

PART 9– COMING INTO FORCE

Coming Into Force

79. This Law comes into force on the date of its enactment by the Tla'amin Legislative Assembly.

THIS LAW IS HEREBY DULY ENACTED by the Tla'amin Legislative Assembly on the 5th day of April, 2016, at Powell River, in the Province of British Columbia.



ORDER OF THE LEGISLATIVE ASSEMBLY OF THE TLA'AMIN NATION

Legislative Assembly Order No.: TNO-LA 18 /2016

Approved and Ordered: April 5, 2016

Order

The Legislative Assembly hereby enacts the *Environmental Protection Law* to take effect on the Effective Date.

Authority

This Legislative Assembly Order is made under the authority of the Final Agreement and the Constitution and in accordance with the *Order of the Legislative Assembly of the Tla'amin Nation* TNO-LA 01/2016 (respecting the Tla'amin Nation Effective Date Period Procedures).

*Signed by the Hegus on behalf of the
Legislative Assembly of the Tla'amin Nation*

(Note: This portion is for administrative purposes only and is not part of the Order)

Authority under which the Order is made:

Law: *Constitution*

Other (please specify): Final Agreement and the *Order of the Legislative Assembly of the Tla'amin Nation TNO-LA 01/2016* (respecting the Tla'amin Nation Effective Date Period Procedures).

DEPOSITED IN THE TLA'AMIN
REGISTRY

ON ___/___/___
(day/month/year)

Signature of Law Clerk



ORDER OF THE LEGISLATIVE ASSEMBLY OF THE TLA'AMIN NATION

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Authority under which the Order is made:

Law: *Constitution*

Other (please specify): Final Agreement and the *Order of the Legislative Assembly of the Tla'amin Nation* TNO-LA 01/2016 (respecting the Tla'amin Nation Effective Date Period Procedures).

DEPOSITED IN THE TLA'AMIN
REGISTRY

ON 12/04/16
(day/month/year)


Signature of Law Clerk