

WHITECAP DAKOTA FIRST NATION
ENVIRONMENTAL PROTECTION LAW



September 10, 2018

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PREAMBLE

Whereas the Whitecap Dakota First Nation has a profound relationship with the land and has a deep desire to preserve its relationship with the land that is rooted in respect for the Spiritual value of the Earth and the gifts of the Creator;

Whereas the Whitecap Dakota First Nation asserts that it has an inherent right to self-government that has been provided by the Creator, manifesting since time immemorial as a right to political, legal, economic and social structures based on the history, language, culture, spiritual traditions, and philosophy of the Dakota and especially the Whitecap Dakota First Nation's rights to its traditional lands, territories and resources;

Whereas Whitecap Dakota First Nation asserts that control over developments affecting Whitecap Dakota First Nation members and Whitecap Dakota First Nation lands, territories and resources will enable the Whitecap Dakota First Nation to maintain and strengthen its institutions, culture and traditions, and to promote their development in accordance with the Whitecap Dakota First Nation's aspirations and needs;

Whereas the sections 23.4 and 23.5 of the Framework Agreement on First Nation Land Management entered into between the Whitecap Dakota First Nation and Canada contemplate the implementation of an environmental assessment and protection regime for Whitecap Dakota First Nation lands that is harmonized with that of the Province of Saskatchewan, to promote an effective and consistent environmental regime and process and to avoid uncertainty and duplication;

Whereas jurisprudence in relation to the *Constitution Act, 1867* leaves some uncertainty with respect to the application of some provincial laws to reserve lands and the intention of this Law is to ensure that the provincial laws set out in the Schedule to this Law apply as Whitecap Dakota First Nation law to Whitecap Dakota First Nation Lands, within the limits of the Whitecap Dakota First Nation's constitutional authority;

Whereas an Administrative Management and Servicing Agreement has been concluded between the Whitecap Dakota First Nation and the Province of Saskatchewan for the administration and enforcement of this Law by provincial officials;

And whereas, in furtherance of the inherent right to self-government, Whitecap Dakota First Nation will periodically review this Whitecap Dakota First Nation Environmental Protection Law, the laws of Canada, the laws of Saskatchewan, and the laws of other jurisdictions, with a view to ensure this this Whitecap Dakota First Nation Environmental Protection Law meets the objectives of Whitecap Dakota First Nation, and it may from time to time amend or repeal and replace this Whitecap Dakota First Nation Environmental Protection Law in connection therewith.

NOW THEREFORE the Council of the Whitecap Dakota First Nation, in the exercise of its inherent right to govern Whitecap Dakota First Nation Lands and the powers in relation to those lands recognized by the *First Nations Land Management Act*, S.C. 1999, c.24 duly enacts as follows:

WDFN Environmental Protection Law

Citation

1. This Law may be cited as the *Whitecap Dakota First Nation Environmental Protection Law*.

INTERPRETATION

Definitions

2. The following definitions apply in this Law, including the Preamble to this Law.

“**incorporated laws**” means the statutes, regulations and other legislative instruments of Saskatchewan, or the portions of them, set out in the Schedule to this Law, as amended from time to time and as adapted by sections 10 to 21.

“**government agency**” has the same meaning as in *The Environmental Management and Protection Act, 2010*, S.S. 2010, c. E-10.22.

“**Whitecap Dakota First Nation Lands**” has the same meaning as in the *Whitecap Dakota First Nation Land Code*.

Saskatchewan Interpretation Act, 1995

3. Incorporated laws are to be interpreted in accordance with *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2, as amended from time to time and, for that purpose, references to “enactment” in that Act are to be read to include the incorporated laws.

Other expressions

4. Unless otherwise defined by this Law or unless the context otherwise requires, words used in this Law have the same meaning as in the law of Saskatchewan.

APPLICATION OF LAWS

Incorporation by reference

5. Subject to section 6, the incorporated laws apply to Whitecap Dakota First Nation Lands.

Restriction

6. (1) A provision of an incorporated law applies only if the provision of the law of Saskatchewan it incorporates is in force.

(2) For greater certainty, an incorporated law applies only to the extent that it is within the limits of the constitutional authority of the Whitecap Dakota First Nation.

WDFN Environmental Protection Law

Incorporation of procedural matters

- 7.** (1) Unless otherwise provided and subject to any adaptations set out in sections 10 to 21:
- (a) the enforcement of incorporated laws,
 - (b) the prosecution of an offence, or any other proceedings, in relation to the contravention of an incorporated law,
 - (c) the review or appeal of an action or decision taken, or of a failure to take an action that could have been taken, under an incorporated law, and
 - (d) any requirements for notice or service in relation to an action to be taken under an incorporated law, are to be conducted in accordance with the laws of Saskatchewan, whether those laws have been incorporated or not.
- (2) For the purposes of subsection (1), a person or body that has a power, duty or function under a law of Saskatchewan has the same power, duty or function in respect of any actions taken under that subsection.

Offences and penalties

- 8.** Where contravention of a law of Saskatchewan that is incorporated in this Law is an offence under the laws of Saskatchewan, a contravention of the incorporated law is also an offence and is subject to the same the penalties as under the laws of Saskatchewan.

Financial requirements under lease

- 9.** (1) In any lease of Whitecap Dakota First Nation Lands, the Whitecap Dakota First Nation, acting through its Council, may require that a cash deposit or other financial security be provided to ensure the performance of any obligations to remediate land or maintain other environmental standards.
- (2) Where the incorporated laws require a cash deposit or other financial security to be given, those requirements do not displace, but instead apply in addition to, the requirements of any lease of Whitecap Dakota First Nation Lands in relation to cash deposits or other financial security.

ADAPTATIONS APPLICABLE TO ALL INCORPORATED LAWS

Saskatchewan Acts and regulations

- 10.** Unless otherwise indicated, the statutes and regulations referred to in sections 12 to 21 are the statutes and regulations of Saskatchewan.

WDFN Environmental Protection Law

Interpretation of incorporated laws

11. (1) Incorporated laws shall be read without reference to any of the following:

(a) any repealed section or any section making consequential amendments to other enactments that are not adopted environmental laws;

(b) references to provisions of a statute or regulation set out in the Schedule that has been excluded from incorporation;

(c) provisions appointing a person, providing for the remuneration of a person, or establishing or continuing a government agency, registry, program or fund;

(d) provisions relating to the internal management of a government agency;

(e) provisions requiring or authorizing monies to be spent from the Consolidated Revenue Fund of Saskatchewan; and

(f) provisions authorizing the Lieutenant-Governor in Council, a Minister or a government agency to make regulations, except to the extent required to make the regulations set out in the Schedule.

(2) Notwithstanding subsection 11(1)(c),

(a) a person appointed to a position under a law of Saskatchewan that has been incorporated by reference in this Law is deemed to have been appointed to the same position for the purposes of this Law, for so long as that person remains in that position under the law of Saskatchewan; and

(b) a government agency, registry, program or fund established or continued under a law of Saskatchewan that has been incorporated by reference in this Law is deemed to have been established or continued for the purposes of this Law.

Excepted appointments

(3) Subsection 11(1)(c) does not apply to an appointment made under subsection 59(1) of *The Environmental Management and Protection Act, 2010*, S.S. 2010, c.E-10.22.

Specified officials and bodies

(4) For greater certainty, a person or body that has a power, duty or function under a law of Saskatchewan incorporated by reference in this Law has the same power, duty or function under this Law, subject to the adaptations set out in sections 10 to 21.

Interpretation of incorporated laws

(5) For greater certainty, a reference in an incorporated law, or in any notice, form,

instrument or other document issued under an incorporated law, to a law of Saskatchewan or one of its provisions is to be read as a reference to that law or provision as by this Law.

ADAPTATIONS TO THE ENVIRONMENTAL MANAGEMENT AND PROTECTION ACT,
2010 AND REGULATIONS

The Environmental Management and Protection Act, 2010

Adaptation to ss. 2(1)(x)

12. Subsection 2(1)(x) of the Act is to be read as follows:

“(x) **“owner”**, with respect to Whitecap Dakota First Nation Lands, means Whitecap Dakota First Nation;”

Adaptation to ss. 12(3)

13. Subsection 12(3) of the Act is to be read to include:

“(a.1) In this subsection 12(3)(a.1) “Whitecap Dakota First Nation” includes any entity owned by Whitecap Dakota First Nation. Whitecap Dakota First Nation is not a person responsible unless, after the date on which Whitecap Dakota First Nation is entitled to take possession of the land, Whitecap Dakota First Nation aggravates an existing adverse effect or discharges a new or additional substance into the environment that:

(i) may cause or is causing an adverse effect; or

(ii) aggravates the adverse effect of the previous discharge of a substance on that land;”

Adaptation to ss. 22(7)

14. Subsection 22(7) of the Act is replaced with:

“The minister shall provide notice of registration of a document respecting an environmentally impacted site to Whitecap Dakota First Nation.”

Modification to ss. 50(1)(a)

15. Subsection 50(1)(a) of the Act is replaced with:

“(a) on any land that is in actual possession by another person or Whitecap Dakota First Nation; or”

WDFN Environmental Protection Law

Adaptation to ss. 79(1) and 80(1)(c)

- 16.** An environment officer acting under subsection 79(1) or subsection 80(1)(c) of the Act is deemed to be acting on behalf of the Whitecap Dakota First Nation.

The Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations

Adaptation to c. E.1.2, s. 1.1(a) of Appendix

- 17.** Subsection 1.1(a) of chapter E.1.2 of the Appendix to the Regulations is to be read as follows:

“(a) oil and gas activities regulated pursuant to the *Indian Oil and Gas Act*, R.S.C. 1985, c-l-7;

The Hazardous Substances and Waste Dangerous Goods Regulations

Adaptation to ss. 9(2)(a)

- 18.** Subsection 9(2)(a) of the Regulations is to be read as follows:

“(a) In the case of an existing storage facility, the owner of the storage facility shall register the storage facility with the director on a form provided by the minister within six months from the date on which the *Whitecap Dakota First Nation Environmental Protection Law* came into force.”

Adaptation to ss.15(1)(b)(i)

- 19.** In subsection 15(1)(b)(i) of the Regulations, the reference to the “National Fire Code of Canada, 1990, as revised, amended or substituted at the date of the coming into force of this subclause” is to be read as a reference to the “National Fire Code of Canada, 2010, as amended from time to time”.


COMING INTO FORCE

Coming into force


- 20.** This Law comes into force upon the execution of The Bilateral Administrative Management and Servicing Agreement between Whitecap Dakota First Nation and Saskatchewan.

THIS LAW IS HERBY DULY ENACTED by Council on the 10th day of September 2018, at Whitecap Dakota First Nation, in the Province of Saskatchewan.

A quorum of Council consists of two (2) members of Council.



Chief Darcy Bear

Councillor Dwayne Eagle

Councillor Dalyn Bear

SCHEDULE

INCORPORATED LAWS

Statutes and Regulations

The Environmental Management and Protection Act, 2010, S.S. 2010, c. E-10.22, other than subsections 13(3), 13(4) and section 23.

The Environmental Management and Protection (General) Regulations, E-10.22 Reg 1

The Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations, E-10.22 Reg 2

The Hazardous Substances and Waste Dangerous Goods Regulations, E-10.2 Reg 3