

Legal and Policy Tools for Source Water Protection in Indigenous Communities

APPENDICES 1 – 4: TEMPLATE BY-LAWS

These templates are provided for informational purposes only and are not legal advice. These templates are the Appendices to the toolkit “Legal and Policy Tools for Source Water Protection in Indigenous Communities,” current to January 2019.

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V. Legal Tool: By-laws as an Authority for Environmental Protection & Enforcement

Source water protection can be addressed through the enactment of environmental laws in relation to First Nation lands under the *Indian Act* or the *Framework Agreement*, which allows First Nations to establish and implement land governance overseeing reserve lands and resources.

As Federal environmental legislation does not provide an effective or comprehensive management regime for these lands and there is very little meaningful regulation to deal with environmental matters such as source water protection or the remediation of contaminated sites on First Nation lands,¹⁹ a series of by-laws were drafted to respond to threats identified by the CMO communities. These by-laws relate to agricultural and nutrient management (Appendix 1), waste management (Appendix 2), septic systems (Appendix 3), and wetlands (Appendix 4).

1. Environmental Protection under the *Indian Act*

First Nation lands are within the exclusive jurisdiction of the federal government, which means that federal laws of general application will apply to reserve lands regardless of the applicable administrative regime unless another piece of federal legislation expressly excludes them. There are no federal laws dealing with local land matters, such as zoning, land use, and building codes because these are “property and civil rights” matters under the exclusive jurisdiction of the provinces. Parliament does exercise limited environmental regulation through federal laws of general application, such as the *Canadian Environmental Assessment Act*, the *Fisheries Act*, the *Species at Risk Act*, and the *Canadian Environmental Protection Act*. However, these laws are not specific to First Nation lands.

While the federal government is competent to enact environmental laws in relation to First Nation lands, Federal environmental legislation does not provide an effective or comprehensive management regime for these lands. There is very little meaningful regulation for dealing with environmental matters such as source water protection or the remediation of contaminated sites on First Nation lands.²⁰

The primary legislation through which the federal government exercises its jurisdiction over First Nation lands is the *Indian Act*. While there is a land management regime under the *Indian Act*,²¹ there are no

¹⁹ “Contaminated Sites on First Nation Lands”, 2016 Site Remediation in B.C. Conference – B.C. Ministry of Environment. Vancouver, BC, September 2016 online: http://www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated_Sites_on_First_Nation_Lands-Final.pdf.

²⁰ “Contaminated Sites on First Nation Lands”, 2016 Site Remediation in B.C. Conference – B.C. Ministry of Environment. Vancouver, BC, September 2016 online: http://www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated_Sites_on_First_Nation_Lands-Final.pdf.

²¹ The regulations under the *Indian Act* include the *Indian Reserve Waste Disposal Regulations*, the *Indian Timber Regulations*, *Indian Timber Harvesting Regulations*, and the *Indian Mining Regulations*, which establish limited rules for environmental management during specific activities.

express provisions for the protection of the environment on First Nation lands. The environmental management that is available emerges indirectly through regulation, through the First Nation's by-law making authority, and through contract.

The *Indian Act* grants certain by-law making authority under section 81 to Band Councils for the regulation of certain activities on First Nation lands. Section 81(1) of the *Indian Act* sets out the purposes for which Band Councils may make by-laws "not inconsistent with" the *Indian Act* or any federal regulation. These powers are analogous to the powers granted to municipalities and are very limited in scope. Most notably, section 81(1) does not include environmental management matters as enumerated powers. By-laws enacted under section 81(1) include 22 subject areas that may impact development including health, law and order, zoning, prevention of nuisance, trespass, regulation of traffic, regulation of the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works, the control of noxious weeds, regulation of water supplies, and the preservation, protection and management of animals on reserve. Indian Affairs and Northern Development has suggested that by-law powers can incidentally address issues of pollution and contamination by regulating:²²

- garbage disposal (subject to the Indian Reserve Waste Disposal Regulations, CRC, c 960);
- burning (grass, tires, garbage etc.);
- the use of dangerous materials; and
- management of fur-bearing animals, fish and other game on reserve (which is limited to zoning nature preservation areas and protecting areas from development).

While it is technically possible for by-laws to play a role in environmental management, they have serious limitations. This is because their enforcement powers are very weak. Offences must be prosecuted through summary conviction, and the maximum penalties are a fine of \$1000, imprisonment for a term not exceeding 30 days, or both.

The 2014 amendments to the *Indian Act* eliminated the requirement for Ministerial approval of by-laws prior to their enactment.²³ The amendments also allowed First Nations to now keep the proceeds from fines imposed under by-laws, rather than remitting the fines to the Minister. However, the maximum penalties were not amended are still insufficient to deter major polluters or to recover the costs of remediation.²⁴

²² Indigenous and Northern Development Canada, *Appropriate Authorities in the Indian Act for the Enactment of By-Laws*, 2012, Online: <<https://web.archive.org/web/20121016111630/http://www.aadnc-aandc.gc.ca/eng/1100100013962/1100100013963>>.

²³ *Indian Act Amendment and Replacement Act*, SC 2014, c. 38.

²⁴ "Contaminated Sites on First Nation Lands", 2016 Site Remediation in B.C. Conference – B.C. Ministry of Environment. Vancouver, BC, September 2016 online: <http://www.woodwardandcompany.com/wp-content/uploads/pdfs/2016-09-20-Contaminated_Sites_on_First_Nation_Lands-Final.pdf>.

2. Environmental Protection under the *First Nation Land Management Act*

Parliament has attempted to address environmental issues on First Nations' lands by, primarily, transferring administrative and management responsibility to First Nations themselves. One way this is being achieved is through the development and implementation of the *Framework Agreement* and the *First Nation Land Management Act*. The FNLMA provides First Nations with the statutory authority, not possible under the *Indian Act*, to manage and develop their lands and the recognition of rights and capacities with respect to the governance and management of their lands. Under this program, the federal government delegates responsibility for land management to First Nations who administer this authority pursuant to their own Land Code.²⁵ The FNLMA regime also recognizes all existing rights and interests in Reserve Lands at the time a land code comes into effect, including the special rights and interests that locatees have in their lands.

In order to transition from the *Indian Act* regime to the FNLMA regime, a First Nation must take a number of steps, including the adoption and ratification of a land code. Once ratified a land code becomes the basic land law of the First Nation and replaces the land management provisions of the *Indian Act*. The rights and obligations of Her Majesty pursuant to instruments granted under the *Indian Act* in respect of the Reserve Lands of the First Nation who has adopted a land code become those of the First Nation.²⁶ AANDC then ceases involvement in the management of the First Nation's lands and resources.

Land Codes provide for a comprehensive land management regime, including rules and procedures for the granting and transfer of interests in First Nation lands. While the FNLMA stipulates the subject matters that must be contained in a land code, Land Code First Nations have a broader authority to govern land use in a way that is more similar to the authority granted to municipalities. Additionally, in contrast to First Nations who are subject to the *Indian Act*, First Nations with a land code have the express ability to establish environmental regulation over their lands. The result is that Land Code First Nations have the potential to administer their lands under a more comprehensive and autonomous regime than do First Nations operating under the *Indian Act*.

3. Legal Precedents

This document appreciates that a First Nation may not yet be at a stage that enables the community to develop regulations under the broader authority of a Land Code. As a result, a number of samples are provided in Appendices 1 – 4 for First Nations whose lands are governed under the *Indian Act*, while others are drafted assuming greater autonomy for lands and resources under the FNLMA. The samples

²⁵ Ibid; "Development on First Nations Lands Laws of General Application", Real Estate Development on First Nation Lands – Pacific Business & Law Institute. Vancouver, BC, September 2016. Online: http://www.woodwardandcompany.com/wp-content/uploads/pdfs/Real_Estate_Development-Laws_of_General_Application-Final.pdf

²⁶ Section. 16(3) of the FNLMA.

provided are an attempt to address the specific SWP concerns raised by the CMO during the development of this toolkit.

Despite the seemingly limited subject matter, jurisdiction and enforcement powers under the *Indian Act* by-laws, the substantive provisions of these by-laws could still be used as precedent for a First Nation that is no longer governed under the *Indian Act*. The substantive provisions would largely remain the same, while the preamble and enforcement provisions would need to be amended to reflect the particular interests of a First Nation community.

Specific sources of concern for source waters included run-off from agricultural operations, construction waste and run-off, transportation road run-off, septic systems and wells, sewage lagoons, landfills, waste water treatment, fuel storage tanks, and brownfields. Table 2 provides a list of the precedent by laws and a brief description of their purpose.

Table 2. The purpose of precedent laws, By-laws, and regulations.

Laws, By-laws, and Regulations	Purpose
Agricultural Nutrient Management Law	The purpose of this Law and its regulations is to provide for the management of materials containing nutrients used for agricultural operations in a manner that will enhance protection of the natural environment.
Agricultural Nutrient Sample, Analysis, and Quality Standards By-law	A regulation under the Agricultural Nutrient Management Law drafted in the form of a By-law under the <i>Indian Act</i> . The purpose of this By-law is to set standards for materials containing nutrients for use in agricultural operations; including the requirements for sampling and analysis of these materials.
Agricultural Nutrient Land Application Rates Regulation	A regulation under the Agricultural Nutrient Management Law that provides for the allowable application rates of materials with certain nutrients in specific amounts. The application rates are based on the quality of the applied nutrient materials.
Agricultural Nutrient Application Standards Regulation	A regulation under the Agricultural Nutrient Management Law that provides for the allowable standards of materials with certain nutrients in specific amounts. The application standards include such stipulations as setbacks from wells and waterways, and seasonal prohibitions for application based on the quality of the applied nutrient materials.

Agricultural Nutrient Inspection and Orders Regulation	A regulation under the Agricultural Nutrient Management Law that provides for the rules surrounding the inspection of agricultural operations by officers and the order that may be made to ensure compliance with the the Agricultural Nutrient Management Law and its regulations.
Agricultural Nutrient Application Waiting Periods	A regulation under the Agricultural Nutrient Management Law that provides for the waiting periods before certain agricultural operations may be undertaken after certain nutrients have been applied to the land.
Nutrient Application Strategies, Plans and Approvals Regulation	A regulation under the Agricultural Nutrient Management Law that requires the creation of strategies and plans for the application of materials with certain nutrients. The regulation also provides for the requirement of an approval from Council prior to the use of a plan or strategy.
Waste Management By-law	The purpose of this By-law is to establish rules for the disposal and collection of garbage.
Septic Re-Inspection Program By-law	The purpose of this By-law is to establish rules for inspection and assessment of a previously installed septic system.
Wetland Zone By-law	The purpose of this By-law is to establish a wetland zone for the protection of wetlands. It prohibits the disposal waste and certain other activates from occurring within the wetland zone.

Table 3 below, provides a list of some of the threats faced by First Nation communities and legal instruments which could be implemented to counteract the harm of source water threats.

Table 3. Source water threats and accompanying management actions and legal instruments

Threat	Source	Possible Management Actions	Legal Instrument
Agriculture			
Animal feedlots	Waste Lagoons	Immediate actions:	

	Land application Pasture areas	Buffer and setback zones Best management practices nutrient load standards Education Water quality monitoring Longer term: Health regulations Discharge requirements	<ul style="list-style-type: none"> • Agricultural Nutrient Management Law; • Agricultural Nutrient Application Standards Regulation • Agricultural Nutrient Application Waiting Periods Regulation; • Agricultural Nutrient Sampling and Quality Standards Regulation; • Agricultural Nutrient Application Strategies, Plans, and Approvals Regulation; • Agricultural Nutrient Inspection and Orders Regulation; • Outdoor Confinement Area Regulations.
Fertilizers and pesticides	Land Application	Immediate actions: Buffer and setback zones Education Longer term: Health regulations Application standards	
Irrigation	Return flows to groundwater, surface water	Immediate actions: Best management practices Education Longer term: Agricultural management	
Industry			
Landfill	Hazardous material	Immediate actions: Waste separation Landfill monitor Fencing, signage Water quality monitoring	<ul style="list-style-type: none"> • Waste Management By-law • Wetland by-law & Band Council Resolution.

		<p>Education</p> <p>Longer term:</p> <p>Runoff ponds</p> <p>First Nation zoning codes</p> <p>Pollution prevention, education</p>	
Urban (commercial and residential)			
Septic tanks	Individual homes, businesses, multi-family units	<p>Immediate actions:</p> <p>Pump-out regulations</p> <p>Setbacks, construction standards</p> <p>Education</p> <p>Longer term:</p> <p>Review health regulations;</p> <p>Design standards</p> <p>Implement subdivision regulations</p> <p>Site design</p> <p>On-site wastewater regulations</p>	<ul style="list-style-type: none"> • Sanitary Sewer By-law; • Septic Re-inspection Program Law
Unpermitted dumping	Illegal dumping of yard waste, household waste, wood waste, concrete, tires, old cars, etc.	<p>Immediate actions:</p> <p>Education</p> <p>Longer Term:</p> <p>Health Regulations</p>	<ul style="list-style-type: none"> • Waste Management By-law;

The [First Nation name] Law No. XX

Agricultural Nutrient Management Law

A law for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have a **Agricultural Nutrient Management Law**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following law;

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Coming Into Force

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PART I - Purpose, Definitions, and Administration

Purpose, Definitions, and Administration

Short Title:

1. This by-law may be cited as the *“Agricultural Nutrient Management Law”*.

Purpose

2. The purpose of this Law and regulations is to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations.

Interpretation:

3.

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land; (“exploitation agricole”)

“[First Nation name] First Nation” means the government of the [First Nation name] established under this Constitution;

“Chief” means the Chief of the [First Nation name] First Nation;

“Constitution” means the Constitution of the [First Nation name] First Nation;

“By-law Officer” means the person or persons appointed by Council, from time to time, to administer and enforce the provisions of [First Nation name] Laws enacted by Council, and includes any delegate or any peace officer.

“Council” means the branch of [First Nation name] First Nation constituted under Article 6 of the Constitution;

“farm animal” means,

- (a) livestock, including poultry and ratites,
- (b) fur-bearing animals,
- (c) bees,
- (d) cultured fish,
- (e) deer and elk,
- (f) game animals and birds, or
- (g) any additional animals, birds or fish prescribed by the regulations; (“animal d’élevage”)

“farmer” means the owner or operator of an agricultural operation; (“agriculteur”)

“Law” means the Agricultural Nutrient Management Law,

“management”, in respect of materials containing nutrients, includes the collection, purchase, acquisition, storage, handling, treatment, sale, transfer, transportation, application, use and disposal of the materials, and “manage” has a corresponding meaning;

“natural environment” means the air, land and water of the Province of Ontario or any combination or part of them;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“peace officer” means a member of the local detachment of the Royal Canadian Mounted Police responsible for policing Westbank Lands, or any delegate;

- (a) building or buildings they serve.

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law.

Directors

4. (1) The Council may, by resolution appoint as Directors any persons as the Council considers necessary.

Powers

(2) Directors shall act as Directors in respect of those sections of this Law, those regulations and those sections of those regulations that are set out in their appointment.

Limitation of authority

(3) In an appointment of a Director, Council may limit the authority of the Director in the manner that Council considers necessary or advisable.

By-law officers

5. (1) Council may in writing designate as by-law officers any person the Council considers necessary.

Powers

(2) By-law officers shall act as by-law officers in respect of those sections of this Law, those regulations and those sections of those regulations that are set out in their designation.

Limitation of authority

(3) In a designation of a by-law officer, Council may limit the authority of the by-law officer in the manner that the Council considers necessary or advisable.

Peace officers

(4) A by-law officer is a peace officer for the purpose of enforcing this Law.

Investigation and prosecution

(5) A by-law officer may investigate offences under this Law and may prosecute any person whom the by-law officer reasonably believes is guilty of an offence under this Law.

Application

6. (1) This Law applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

(2) If any section, subsection, paragraph or part of this Law is held to be invalid by either the Council or a court of competent jurisdiction, the invalid portion may be severed and the remainder will be deemed to have been enacted without the invalid portion.

PART II - Management of Materials Containing Nutrients and Regulations Respecting Farm Animals

Nutrient management standards

7. (1) The Council may make regulations,

- (a) establishing standards respecting the management of materials containing nutrients used by and on agricultural operations or used for other uses;
- (b) establishing standards respecting farm practices and other uses to be followed with respect to the materials mentioned in clause (a);
- (c) requiring farmers and other persons to comply with the standards mentioned in clause (a) or (b).

Same

(2) Without limiting the generality of subsection (1), the Council may make regulations,

- (a) governing the management of materials containing nutrients including,
 - (i) specifying standards for the size, capacity and location of buildings or structures that are used to store materials containing nutrients or to house farm animals, including buildings or structures that are not buildings as defined in subsection 1 (1) of the *Building Code Act, 1992*,
 - (ii) specifying standards relating to the construction, on an agricultural operation, of the buildings or structures to which subclause (i) applies and requiring excavations to be carried out around them, including the formation of earth barriers, and specifying standards for the excavations,
 - (iii) respecting the amount of materials containing nutrients that may be applied to lands, the quality of the materials and the type of land to which the materials or a type of the materials may be applied,
 - (iv) respecting the time and manner in which materials containing nutrients may be applied to lands,
 - (v) specifying standards for equipment used to transport and apply materials containing nutrients, and
 - (vi) respecting technologies used for the management of materials containing nutrients, including prescribing conditions for the use of the technologies and respecting the manner and the circumstances in which they may be used;
- (b) requiring farmers and other persons to meet prescribed qualifications and to pass prescribed examinations in relation to the application of materials containing nutrients to lands;
- (c) respecting the qualifications, education, training and certification necessary in order to carry out prescribed nutrient management practices and prohibiting persons other than those with the prescribed qualifications, education, training or certification from performing the prescribed nutrient management practices in an agricultural operation;
- (d) prohibiting persons from engaging in the business of applying materials containing nutrients to lands unless licensed to do so;
- (e) respecting the licensing of persons who are engaged in the business of applying materials containing nutrients to lands, respecting applications for the licences and the issuing, renewing, expiration, suspension and cancellation of the licences, respecting the qualifications for the licences and specifying the conditions of the licences;
- (f) prohibiting the application of materials containing nutrients to lands except in accordance with a nutrient management plan prepared or approved in accordance with the regulations and permitting deviations from the plan in the circumstances specified in the regulations or where the deviation is approved by a person specified in the regulations;

- (g) governing the preparation of nutrient management plans, requiring farmers and others to ensure that a nutrient management plan is prepared in relation to their operations and specifying the method according to which the plan must be prepared and the contents of the plan;
- (h) governing the preparation of nutrient management strategies, requiring that municipalities and generators of prescribed materials ensure that a nutrient management strategy is prepared and specifying the method according to which the strategy must be prepared and the contents of the strategy;
- (i) requiring that nutrient management plans for agricultural operations, or for prescribed classes of agricultural operations, be prepared or approved by persons who meet the qualifications specified in the regulations or who are appointed by any Minister responsible for the administration of a provision of this Law for the purpose of giving the approval;
- (j) requiring that nutrient management strategies for municipalities and generators of prescribed materials, or for prescribed classes of those municipalities and generators, be prepared or approved by persons who meet the qualifications specified in the regulations or who are appointed by any Minister responsible for the administration of a provision of this Law for the purpose of giving the approval;
- (k) providing for the issue of approvals and their termination and amendment;
- (l) specifying the length of time for which a nutrient management plan or a nutrient management strategy is valid and requiring that, at the prescribed times or when there is a prescribed change in the agricultural operation or other prescribed activity, a new plan or strategy be prepared and approved or an existing plan or strategy be amended and approved;
- (m) providing for the amendment or termination of nutrient management plans or nutrient management strategies by persons who are appointed by any Minister responsible for the administration of a provision of this Law for the purposes of doing those amendments or terminations, if the plans or strategies are not in accordance with the regulations;
- (n) requiring that a nutrient management plan, nutrient management strategy or any other record or document required under this Law be,
 - (i) kept by the farmer or the other persons that are specified in the regulations for the period of time specified in the regulations, or
 - (ii) filed in accordance with the requirements specified in the regulations;
- (o) providing for the establishment of a registry in which nutrient management plans, nutrient management strategies and other prescribed documents relating to this Law shall be recorded or providing for the use of any other registry for recording those plans, strategies and documents;
- (p) providing for access to the documents in a registry described in clause (n) or portions of them;
- (q) requiring that persons who manage materials containing nutrients gather samples of them in accordance with the requirements specified in the regulations and submit them, in accordance with the requirements specified in the regulations, to prescribed persons for the purpose of a chemical analysis;
- (r) governing the manner in which the chemical analysis mentioned in clause (p) is to be performed and requiring that the persons who perform it make the reports on it that are specified in the regulations;

- (s) requiring that studies be conducted in relation to the use of materials containing nutrients on lands, including topographical studies and studies to determine soil types on those lands and studies to determine the depth, volume, direction of flow and risk of contamination of water located on, in and under those lands;
- (t) requiring that the studies mentioned in clause (r) be conducted by a person who has the prescribed qualifications;
- (u) requiring that the recommendations, if any, contained in the studies mentioned in clause (r) be followed in the use of materials containing nutrients on the lands being studied;
- (v) respecting minimum distance separation requirements between,
 - (i) lands to which materials containing nutrients are applied or places in which materials containing nutrients are stored or farm animals are housed, and
 - (ii) properties surrounding the lands or places described in subclause (i) or those other places or geographic features that are specified in the regulations;
- (w) requiring that materials containing nutrients be managed in an environmentally responsible manner as specified in the regulations by persons who are engaged in the purchase, acquisition, resale or disposal of materials containing nutrients or who are otherwise engaged in the trading of materials containing nutrients;
- (x) governing the use of innovative technologies in the management of materials containing nutrients used by and on agricultural operations, including specifying conditions for the use of those technologies and respecting the manner and the circumstances in which they may be used;
- (y) requiring a farmer or whatever other person is specified in the regulations to prepare records or documents in relation to the management of materials containing nutrients and those other matters that are specified in the regulations;
- (z) requiring that a nutrient management plan, nutrient management strategy or any other record or document that must be prepared, kept or filed under this Law, be prepared, kept or filed in an electronic format and respecting requirements for the preparation, keeping and filing of those plans, records and documents in an electronic format;
- (aa) prohibiting a farmer from,
 - (i) constructing a structure or a building to be used to house farm animals or to store materials containing nutrients,
 - (ii) enlarging an existing structure or building that is used to house farm animals or to store materials containing nutrients, or
 - (iii) converting an existing structure or building into one that is used to house farm animals or to store materials containing nutrients,
 - (iv) unless the farmer has,
 - (v) prepared and filed a nutrient management plan or a nutrient management strategy in accordance with the requirements specified in the regulations, and
 - (vi) met the requirements specified in the regulations with respect to the site and construction of the structure or building;
- (bb) respecting the issuance of certificates to a farmer as evidence that the farmer is in compliance with this Law and the regulations and respecting the cancellation, expiry and renewal of the certificates;

- (cc) providing for the establishment and operation of local committees to assist in the doing of any prescribed matters including mediation of disputes in connection with the management of materials containing nutrients on lands.

Director's powers

- (3) A Director may, in accordance with the regulations,
 - (a) issue, amend, suspend or revoke a certificate, licence or approval; or
 - (b) impose or amend conditions on a certificate, licence or approval.

Regulations, farm animals, etc.

- 8. The Council may make regulations,
 - (a) regulating the use of prescribed nutrients on lands used for the production of prescribed crops;
 - (b) regulating the access of farm animals and persons to lands to which prescribed nutrients have been applied;
 - (c) governing the location and operation of feed lots and other places where farm animals are kept outside;
 - (d) restricting the access of farm animals to water and watercourses;
 - (e) governing the disposal, storage and transportation of dead farm animals.

PART VI - Enforcement

Administrative penalties

9. (1) If a Director is of the opinion that a person has contravened a provision of this Law or the regulations, has failed to comply with an order under this Law, or has failed to comply with a condition of a certificate, licence or approval, the Director may, subject to the regulations under subsection (11), issue a notice in writing requiring the person to pay an administrative penalty in the amount set out in the notice for each day or part of a day on which the contravention or failure occurred or continues.

Limitation

- (2) The Director shall not issue a notice under subsection (1) in respect of a contravention or failure later than two years after the later of,
 - (a) the day the contravention or failure occurred; and
 - (b) the day on which the evidence of the contravention or failure first came to the attention of the Director or a provincial officer.

Amount of penalty

(3) An administrative penalty in respect of a contravention or failure shall not exceed \$10,000 for each day or part of a day on which the contravention or failure occurs or continues.

Contents of notice

(4) The notice of an administrative penalty served on the person who is required to pay the penalty shall,

- (a) contain a description of the contravention or failure to which the notice relates, including, where appropriate, the date and location of the contravention or failure;
- (b) specify the amount of the penalty determined by the Director in accordance with the regulations under subsection (11);
- (c) give particulars respecting the time for paying the penalty and the manner of payment; and
- (d) provide information to the person as to the person's right to require a hearing of the matter by the Council under subsection (5).

Regulations

(5) For greater certainty, the regulations made under subsection (11) apply to the Council's decisions under subsection (6).

No offence if penalty is paid

(6) If the person who is required by the notice or the Council's decision to pay the administrative penalty pays it in accordance with the notice or the Council's decision, the person shall not be charged with an offence in respect of the contravention or failure to which the penalty relates.

Failure to pay

(7) If the person who is required by the notice or the Council's decision to pay the administrative penalty does not pay it in accordance with the notice or the Council's decision,

- (a) the notice or decision may be filed with a local registrar of the Superior Court of Justice and the notice or decision may be enforced as if it were an order of the court;
- (b) the Director may by order suspend any certificate, licence or approval that has been issued to the person until the administrative penalty is paid; and
- (c) the Director may refuse to issue any certificate, licence or approval to the person until the administrative penalty is paid.

Interest

(8) Section 129 of the Ontario *Courts of Justice Act* applies in respect of a notice or decision filed with the Superior Court of Justice under subsection (9) and, for the purpose, the date on which the notice or decision is filed shall be deemed to be the date of the order.

Regulations

(9) The Council may make regulations,

- (a) specifying the form and content of notices of administrative penalties;
- (b) specifying the types of contraventions or failures in respect of which and the circumstances in which the Director shall not issue a notice under this section;
- (c) governing the determination of the amounts of administrative penalties, including the criteria to be considered and including providing for different amounts depending on when an administrative penalty is paid;
- (d) respecting any other matter necessary for the administration of a system of administrative penalties provided for by this section.

Order to restrain

10. (1) If a person contravenes this Law or the regulations, fails to comply with an order under this Law, or fails to comply with a condition of a certificate, licence or approval, the Council may, in addition to any other remedy and to any penalty imposed by law, apply to the Superior Court of Justice for an order restraining the person from continuing the contravention or failure.

Court order

(2) If a court convicts a person of an offence under this Law, it may, on its own initiative or on application by counsel for the prosecutor, in addition to any other remedy and to any other penalty imposed by law, make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

No obstruction

10 (1) No person shall hinder or obstruct a Director, a by-law officer or any employee in or agent of the Council or any person involved in carrying out a program of the Council in the performance of duties under this Law.

Providing information

(2) No person shall refuse to provide a Director, a by-law officer, the Council, any employee in or agent of the Council with all information, documents or data that the person is authorized to examine under this Law and the regulations.

False information

(3) No person shall include false or misleading information in any document or data that a Director, a by-law officer, the Council, or agent of the Council is authorized to examine under this Law and the regulations.

Same

(4) No person shall orally, in writing or electronically give or submit false or misleading information in any statement, document or data to a Director, a by-law officer, the Council, any employee in or agent of the Council or any person involved in carrying out a program of the Council in respect of any matter related to this Law or the regulations.

Offences

11. (1) A person is guilty of an offence if the person,

- (a) contravenes this Law or the regulations;
- (b) fails to comply with the conditions of a certificate, licence or approval; or
- (c) fails to comply with an order made by a Director or a by-law officer under this Law.

Directors and officers

(2) Every director or officer of a corporation who knowingly concurs in the commission of an offence by the corporation is guilty of an offence.

Limitation period

12. No proceeding for an offence under this Law or the regulations shall be commenced more than two years after the later of,

- (a) the day on which the offence was committed; and
- (b) the day evidence of the offence first came to the attention of a provincial officer.

Service of offence notice

13. (1) Service of an offence notice or summons on a municipal corporation may be effected by delivering it personally to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation.

Service on other corporations

(2) Service of an offence notice or summons on a corporation other than a municipal corporation may be effected by delivering it personally to the manager, secretary or other officer of the corporation or to a person apparently in charge of a branch office of the corporation.

Service on partnership

(3) Service of an offence notice or summons on a partnership may be effected by delivering it personally to a partner or to a person apparently in charge of an office of the partnership.

Service on a sole proprietorship

(4) Service of an offence notice or summons on a sole proprietorship may be effected by delivering it personally to the sole proprietor or to a person apparently in charge of an office of the sole proprietorship.

Substituted service

(5) On application without notice, a justice, on being satisfied that service cannot be made effectively in accordance with subsections (1) to (4), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the municipal corporation, other corporation, partnership or sole proprietorship, as the case may be.

Service for motor vehicles

14. (1) In this section,

“commercial motor vehicle”, “farm tractor”, “motor vehicle” and “self-propelled implement of husbandry” have the same meanings as in the Ontario *Highway Traffic Act*; (“matériel agricole automoteur”, “tracteur agricole”, “véhicule automobile”, “véhicule utilitaire”)

“offence notice or summons” means,

- (a) an offence notice or summons under Part I of the Ontario *Provincial Offences Act*, or
- (b) a summons under Part III of the Ontario *Provincial Offences Act*. (“avis d’infraction ou assignation”)

Employer

(2) Delivery of an offence notice or summons to the operator of a vehicle that is a motor vehicle, farm tractor or self-propelled implement of husbandry, in respect of an offence under this Law related to the use of the vehicle in the course of the operator's employment shall be deemed to be personal service of the offence notice or summons on the employer of the operator of the vehicle.

Owner or lessee

(3) Delivery of an offence notice or summons to the operator of a vehicle that is a commercial motor vehicle, farm tractor or self-propelled implement of husbandry, in respect of an offence under this Law related to the use of the vehicle shall be deemed to be personal service of the offence notice or summons on the owner or lessee of the vehicle who is named in the offence notice or summons.

Exception

(4) Subsection (3) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be, but the burden of proof of that shall be on the owner or lessee of the vehicle.

Permit holder as owner

(5) For the purposes of this section, the holder of a permit under Part II of the Ontario *Highway Traffic Act* shall be deemed to be the owner of the motor vehicle mentioned in the permit if a number plate under that Part bearing a number that corresponds to the permit was displayed on the vehicle or motor vehicle, as the case may be, at the time the offence was committed.

Exception

(6) Subsection (5) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit, but the burden of proof of that shall be on the holder of the permit.

Presiding judge

15. The Council, by notice to the clerk of the Ontario Court of Justice, may require that a provincial judge preside over a proceeding in respect of an offence under this Law.

Penalties

16. (1) An individual convicted of an offence under this Law is liable to,

- (a) on a first conviction, a fine of not more than \$5,000 for each day or part of a day on which the offence occurs or continues;
- (b) on each subsequent conviction, a fine of not more than \$10,000 for each day or part of a day on which the offence occurs or continues.

Corporation

(2) A corporation convicted of an offence under this Law is liable to,

- (a) on a first conviction, a fine of not more than \$10,000 for each day or part of a day on which the offence occurs or continues;
- (b) on each subsequent conviction, a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues.

Subsequent conviction

(3) For the purposes of determining the penalty to which a person is liable under subsection (1) or (2), a conviction of the person for an offence under this Law is a subsequent conviction if the person has previously been convicted of an offence under,

- (a) this Law;
- (b) [List related by-laws]

Suspension

17. (1) If a person is in default of payment of a fine imposed upon conviction for an offence against this Law or the regulations, on the application of a Director, a justice of the peace may make an order under subsection 69 (2) of the *Provincial Offences Act* directing that, until the fine is paid,

- (a) one or more of the person's certificates, licences or approvals be suspended; and
- (b) no certificate, licence or approval be issued to the person.

Suspension by Director

(2) On being informed of an outstanding order mentioned in subsection (1), the Director may suspend the person's certificate, licence or approval, if it is not already suspended under another order mentioned in that subsection.

Reinstatement

(3) On being informed that the fine and any applicable prescribed administrative fee for the reinstatement of the certificate, licence or approval are paid, the Director shall reinstate the certificate, licence or approval, as the case may be, unless the Director has been informed that,

- (a) there is another outstanding order mentioned in subsection (1) directing that the certificate, licence or approval be suspended; or
- (b) the certificate, licence or approval is suspended under any other order or under another Law.

Order to prevent damage

18. (1) On its own initiative or on the request of the prosecutor, a court that convicts a person of an offence under this Law, in addition to any other penalty imposed by the court, may order the person,

- (a) to take the action, including but not limited to providing an alternate water supply, that the court directs within the time specified in the order to prevent, eliminate or ameliorate damage that results from or is in any way connected to the commission of the offence; or
- (b) to comply with any order that a Director has issued to the person in relation to damage that results from or is in any way connected to the commission of the offence.

Other conditions

(2) An order described in subsection (1) may contain those other conditions that,

- (a) relate to the circumstances of the offence and the circumstances of the person that contributed to the commission of the offence; and

- (b) the court considers appropriate to prevent similar unlawful conduct or to contribute to the person's rehabilitation.

Variation of order

(3) The court that made the order may make any changes in, or additions to, the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances if,

- (a) on its own initiative, it holds a hearing or obtains the consent of the parties to dispense with a hearing; or
- (b) on application by counsel for the prosecutor, by the person convicted or by the person authorized under the Law Society Act to represent the person convicted, with notice to the other party, it holds a hearing or the parties consent to dispense with a hearing.

Conflict

(4) Nothing in this section authorizes the court to make an order that conflicts with an order previously made under this Law by a Director or by-law officer, but the court may make an order under this section supplementing the provisions of an order of a Director or by-law officer.

Continuation in force

(5) If a person bound by a court order made under this section is imprisoned, the order continues in force except in so far as the imprisonment renders it impossible for the person to comply for the time being with the order.

Order for remedial work

19. On its own initiative or on the request of the prosecutor, a court that convicts a person of an offence under this Law may, in addition to, or in substitution in whole or in part for, any other penalty imposed by the court, order the person to carry out an alternative penalty such as,

- (a) performing remedial work on the environment; or
- (b) making payment to a third party for the purposes of educational or remedial work done by or for the third party.

PART IX - Coming Into Force

Coming Into Force

20. This Law comes into force on the date of its enactment by the Council.

The [First Nation name] Law No. XX

Agricultural Nutrient Sampling, Analysis, and Quality Standards

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name], as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name];

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name];

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] community to have an **Agricultural Nutrient Sampling, Analysis, and Quality Standards**;

Now Therefore the Council of the [First Nation name] hereby makes the following Regulation;

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PART I – DEFINITIONS AND INTERPRETATION

Definitions and General

Short Title

1. This regulation may be cited as the “*Nutrient Sampling, Analysis, and Quality Standards Regulation*”.

Definitions and general

2. (1) In this Regulation,

“**agricultural operation**” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“**agricultural source materials**” or “**ASM**” means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

- 1. Manure produced by farm animals, including associated bedding materials.
- 2. Runoff from farm-animal yards and manure storages.
- 3. Washwaters from agricultural operations that have not been mixed with human body waste.
- 4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.
- 5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario *Nutrient Management Act*;

“**application**”, in relation to the application of a material to land, does not include the direct deposit onto land of feces or urine by animals;

“**Category 1 non-agricultural source materials**” or “**Category 1 NASM**” means non-agricultural source materials described in Table 1 of Schedule 1;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 1;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 1;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled **“Ontario Compost Quality Standards”**, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“control”, as a verb in relation to land, an agricultural operation or a non-agricultural operation, includes manage and operate;

“CP1”, when used in reference to NASM, means that its content of a pathogen named in Column 1 of Table 1 or Table 2 of Schedule 2 does not exceed the level set out in Column 2 or 3 of Table 1 or Column 2 or 3 of Table 2;

“CP2”, when used in reference to NASM, means that,

- (a) its content of *E. coli* exceeds that of CP1 NASM but does not exceed the level set out in Column 2 or 3 of Table 3 of Schedule 2, or
- (b) its content of a pathogen other than *E. coli* named in Column 1 of Table 1 or Table 2 of Schedule 2 exceeds that of CP1 NASM, but its content of *E. coli* does not exceed that of CP2 NASM;

“farm unit” means land consisting of, or designated as, a farm unit under section 6 of the **Nutrient Application Strategies, Plans, and Approvals Regulation**;

“generator” means a person who owns or controls an operation in the course of which prescribed materials are generated, and includes an intermediate generator;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.

3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“Nutrient Management Protocol” means,

- (a) the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of this Regulation and dated July 25, 2012, and
- (b) Table 1 (Nutrient Unit Livestock Information Table) and Table 2 (Manure Databank) of the Nutrient Management Tables;

“Nutrient Management Tables” means the document of that name, as amended from time to time, prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the NASM Odour Guide and the Nutrient Management Protocol;

“operation” means an agricultural operation or a non-agricultural operation;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation.

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law.

Surface water

3. (1) In this Regulation,

“surface water” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 1. is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and

2. has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

1. Grassed waterways.
2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
3. Rock chutes and spillways.
4. Roadside ditches that do not contain a continuous or intermittent stream.
5. Temporarily ponded areas that are normally farmed.
6. Dugout ponds.
7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Nutrients

4. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application to Traditional Territories

5. (1) This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore and riparian areas over which the [First Nation name] has jurisdiction or delegated authority.

Application of Regulation

6. (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) of the **Nutrient Application Strategies, Plans, and Approvals Regulation** applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

6.1 For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by

implication by the Regulations or by an order made under section 23 or 24 of the *Agricultural Nutrient Inspection and Orders Regulation*.

PART II – SAMPLING, ANALYSIS AND QUALITY STANDARDS

General

Calculation procedures

7. (1) For the purposes of making a calculation under this Part in relation to a sample, a person shall use the actual analytical results obtained by the person who does an analysis of the sample under this Part.

(2) If this Part requires an arithmetic average or geometric mean of concentrations to be determined, the most recently determined arithmetic average or geometric mean, as the case may be, shall be used.

Manure and Anaerobic Digestion Output

Sampling obligations

8. (1) Each person who is required to have a nutrient management plan for an agricultural operation, in the course of which manure or anaerobic digestion output that falls within the definition of agricultural source material is applied to land, that is the first such plan for the operation, shall, as part of preparing the plan,

- (a) collect at least one sample from the soil of the land or, if the plan deals with land in parts under subsection 17 (3) of the *Nutrient Application Strategies, Plans, and Approvals Regulation*, from each part of the land and have the sample analyzed in accordance with subsection (4) to determine the concentration of each of the following parameters: plant available phosphorus, plant available potassium; or
- (b) for the purpose of subsection 7 (1) of the *Nutrient Land Application Rates Regulation*, use the following concentrations to calculate the maximum application rate to land:
 - (i) 101 milligrams per litre of plant available phosphorus in the soil of the land.
 - (ii) 251 milligrams per litre of plant available potassium in the soil of the land.

(2) Each person who is required to have a nutrient management plan for an agricultural operation, in the course of which manure or anaerobic digestion output that falls within the definition of agricultural source material is applied to land, that is not the first such plan for the operation, shall, as part of preparing the plan, collect at least one sample from the soil of the land or, if the plan deals with land in parts under subsection 17 (3) of the *Nutrient Application Strategies, Plans, and Approvals Regulation*, from each part of the land and have the sample analyzed in accordance with subsection (4) to determine the concentration of each of the following parameters: plant available phosphorus and plant available potassium.

(3) Each person who is required to have a nutrient management plan for an agricultural operation, in the course of which manure or anaerobic digestion output that falls within the definition of agricultural source material is applied to land, shall, as part of preparing the plan,

- (a) collect at least one sample of each type of the manure or anaerobic digestion output applied to the land and have the sample analyzed in accordance with subsection (4) to determine the concentration of each of the following parameters: ammonia and ammonium nitrogen, total Kjeldahl nitrogen, total phosphorus, total potassium and total solids; or
- (b) obtain the default data from the Nutrient Management Protocol in relation to each parameter listed in clause (a).

(4) The analysis mentioned in subsection (1) or (2) shall be performed by a laboratory that is accredited by the Ministry of Agriculture, Food and Rural Affairs for that purpose.

(5) The analysis mentioned in subsection (3) shall be performed by,

- (a) a laboratory that is accredited by the Ministry of Agriculture, Food and Rural Affairs for that purpose; or
- (b) a laboratory that is accredited in accordance with the International Standard ISO/IEC 17025 — General Requirement for the Competence of Testing and Calibration Laboratories, dated December 15, 1999, as amended from time to time.

Non-Agricultural Source Materials — Sampling and Analysis

Sampling and analysis procedures

9. (1) Each person who is required under section 10 or 11 to collect a sample shall do so in accordance with this Part and the methods specified in the Sampling and Analysis Protocol.

(2) Each person who is required under section 10 or 11 to have a sample analyzed shall have the analysis done in accordance with this Part and the methods specified in the Sampling and Analysis Protocol.

(3) Whenever this Part requires a person to collect a sample or to have it analyzed, the sample shall be a composite sample.

(4) Subsections (1) to (3) apply, with necessary modifications, to testing required by a Director under section 14.0.16.

Soil testing

10. (1) Each person who is required to have a nutrient management plan or NASM plan for an agricultural operation in the course of which Category 2 or Category 3 NASM is applied to land shall, as part of preparing the plan, collect at least one sample from the soil of the land and have the sample analyzed to determine the concentration of each of the following parameters:

1. Plant available phosphorus.
2. Plant available potassium.
3. Regulated metals.
4. Soil pH.

(2) In the case of the analysis for each regulated metal, the analysis must report the concentration of each regulated metal in the sample in milligrams of metal per kilogram of total solids, calculated on a dry weight basis.

(3) A nutrient management plan or NASM plan does not come into force until the person who is required to comply with subsections (1) and (2) has done so.

(4) If the most recent sample collected and analyzed under subsection (1) as part of preparing the nutrient management plan or NASM plan, or under this subsection, was collected more than five years before the date on which it is proposed to apply Category 2 or Category 3 NASM to the land, the person who is required to comply with subsections (1) and (2) shall ensure that a fresh sample is collected and analyzed in accordance with those subsections. .

(5) This Regulation does not require soil testing before Category 1 NASM is applied to land, except as set out in subsection (6). .

(6) Subsections (1), (2) and (4) apply, with necessary modifications, to a person who proposes to apply more than 20 tonnes of Category 1 NASM per hectare of land, during a calendar year, in the course of an agricultural operation. .

NASM testing

11. Each generator who generates non-agricultural source materials that are intended to be applied to land in the course of an agricultural operation shall, on or before the transfer date,

- (a) carry out sampling in accordance with section 13, 14, 14.0.1, 14.0.2, 14.0.3, 14.0.4 or 14.0.5, as the case may be; and
- (b) have the samples analyzed as the relevant section requires.

Prohibition

12. (1) This section applies with respect to a person who is required to have a nutrient management plan or NASM plan for an agricultural operation in the course of which non-agricultural source materials are applied to land.

(2) If one of the conditions set out in subsection (3) is satisfied, the person shall not receive non-agricultural source materials on the farm unit on which an agricultural operation is carried out unless the person also receives the results of any analysis required by section 13, 14, 14.0.1, 14.0.2, 14.0.3, 14.0.4 or 14.0.5, or under section 14.0.16, as the case may be.

(3) The conditions mentioned in subsection (2) are:

- 1. The person is receiving materials generated by that particular generator for the first time.
- 2. More than 1 month has passed since the last time the person received the results of any analysis described in subsection (2) from that generator.

(4) The generator shall ensure that, when the person receives non-agricultural source materials from the generator, the person also receives the results of any analysis described in subsection (2).

Category 1 NASM

13. (1) This Regulation does not require testing of Category 1 NASM, except as set out in subsection (2).

(2) Section 14 applies, with necessary modifications, if Category 1 NASM is to be applied to land at a rate of more than 20 tonnes per hectare of land during a calendar year.

Category 2 NASM

14. (1) This section applies to Category 2 NASM.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. The samples shall be analyzed for the following parameters:
 - i. Total solids.
 - ii. Total Kjeldahl nitrogen.
 - iii. Ammonia and ammonium nitrogen.
 - iv. Nitrate and nitrite nitrogen.
 - v. Total phosphorus.
 - vi. All regulated metals.
 - vii. Any additional parameters listed in Column 2 of Table 2 of Schedule 1.
3. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

(3) NASM to which this section applies is assumed to be CP1; no sampling or analysis for pathogens is required.

Category 3 NASM, except sewage biosolids and other material containing human body waste

14.0.1 (1) This section applies to Category 3 NASM, except sewage biosolids and other material containing human body waste.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. The samples shall be analyzed for the following parameters:
 - i. The parameters listed in subparagraphs 2 i to vi of subsection 14 (2).
 - ii. Any additional parameters listed in Column 2 of Table 3 of Schedule 1.
3. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

(3) NASM to which this section applies is assumed to be CP2; sampling and analysis are required only if the generator wishes to determine pathogen levels in order to confirm that the material is CP1.

(4) If NASM to which this section applies is sampled and analyzed to determine pathogen levels, the following rules apply:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.

2. The samples shall be analyzed for the pathogens listed in Items 1, 2, 3 and 4 of Column 1 of Table 1 of Schedule 2, subject to paragraph 4.
3. If the NASM is generated at a site operating under an environmental compliance approval issued in respect of an activity mentioned in subsection 27 (1) of the *Environmental Protection Act* or subsection 53 (1) of the *Ontario Water Resources Act*, the samples do not need to be analyzed for the pathogens listed in Items 3 and 4 of Column 1 of Table 1 of Schedule 2.
4. The level of each pathogen shall be calculated as the geometric mean of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

Sewage biosolids from large treatment works

14.0.2 (1) This section applies to sewage biosolids from municipal sewage treatment works with an approved design capacity of more than 45,400 cubic metres, but only if,

- (a) the sewage biosolids are not stored or treated in a lagoon; and
- (b) the generator ships them directly to an agricultural operation for land application.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Four samples shall be taken during the two-month period before the transfer date. At least two of them shall be taken during the one-month period before the transfer date.
2. The samples shall be analyzed for the parameters listed in subparagraphs 2 i to vi of subsection 14 (2).
3. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

(3) The following rules apply to sampling and analysis to determine pathogen levels:

1. Four samples shall be taken during the two-month period before the transfer date. At least two of them shall be taken during the one-month period before the transfer date.
2. If the generator wishes to confirm that the material is CP2, the samples need to be analyzed only for *E. coli*.
3. If the generator wishes to confirm that the NASM is CP1, the samples shall be analyzed for the pathogens listed in Column 1 of Table 2 of Schedule 2.
4. The level of each pathogen shall be calculated as the geometric mean of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

Sewage biosolids from small treatment works

14.0.3 (1) This section applies to sewage biosolids from municipal sewage treatment works with an approved design capacity of 45,400 cubic metres or less, but only if,

- (a) the sewage biosolids are not stored or treated in a lagoon; and

(b) the generator ships them directly to an agricultural operation for land application.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. The samples shall be analyzed for the parameters listed in subparagraphs 2 i to vi of subsection 14 (2).
3. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

(3) The following rules apply to sampling and analysis to determine pathogen levels:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. If the generator wishes to confirm that the NASM is CP2, the samples need to be analyzed only for E. coli.
3. If the generator wishes to confirm that the NASM is CP1, the samples shall be analyzed for the pathogens listed in Column 1 of Table 2 of Schedule 2.
4. The level of each pathogen shall be calculated as the geometric mean of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

Sewage biosolids from lagoons

14.0.4 (1) This section applies to sewage biosolids from municipal sewage lagoons, but only if the generator ships the NASM directly to an agricultural operation for land application.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Four samples shall be taken during the four-month period before the transfer date.
2. If the lagoon has more than one cell, all samples must be taken from the cell from which the NASM is to be obtained.
3. The samples shall be analyzed for the parameters listed in subparagraphs 2 i to vi of subsection 14 (2).
4. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date.

(3) The following rules apply to sampling and analysis to determine pathogen levels:

1. Four samples shall be taken during the four-month period before the transfer date.
2. If the lagoon has more than one cell, all samples must be taken from the cell from which the NASM is to be obtained.
3. If the generator wishes to confirm that the NASM is CP2, the samples need to be analyzed only for E. coli.

4. If the generator wishes to confirm that the NASM is CP1, the samples shall be analyzed for the pathogens listed in Column 1 of Table 2 of Schedule 2.
5. The level of each pathogen shall be calculated as the geometric mean of the results from all samples taken during the four-month period before the transfer date.

Other sewage biosolids and materials containing human body waste

14.0.5 (1) This section applies to the following:

1. Sewage biosolids that come from any source not described in sections 14.0.2, 14.0.3 and 14.0.4.
2. Sewage biosolids that come from a source described in section 14.0.2, 14.0.3 or 14.0.4 but are not shipped directly to an agricultural operation for land application.
3. Other materials containing human body waste, other than untreated septage.
4. Other materials that result from the processing of materials that include sewage biosolids or human body waste.

(2) The following rules apply to sampling and analysis to determine nutrient and metal content:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. The samples shall be analyzed for the parameters listed in subparagraphs 2 i to vi of subsection 14 (2).
3. The concentration of each parameter shall be calculated as the average of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

(3) The following rules apply to sampling and analysis to determine pathogen levels:

1. Two samples shall be taken during the two-month period before the transfer date. At least one of them shall be taken during the one-month period before the transfer date.
2. If the generator wishes to confirm that the material is CP2, the samples need to be analyzed only for E. coli.
3. If the generator wishes to confirm that the NASM is CP1, the samples shall be analyzed for the pathogens listed in Column 1 of Table 2 of Schedule 2.
4. The samples do not need to be analyzed for the pathogens listed in Items 3 and 4 of Column 1 of Table 2 of Schedule 2 if the material is NASM listed in Item 11.1 of Column 1 of Table 3 of Schedule 1.
5. The level of each pathogen shall be calculated as the geometric mean of the results from all samples taken during the four-month period before the transfer date. The results from the samples mentioned in paragraph 1 may be excluded from the calculation if, on the transfer date, the generator has not yet received those results.

SCHEDULE 1

CATEGORIES OF NON-AGRICULTURAL SOURCE MATERIALS

Table 1: CATEGORY 1 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Culled fruit and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	No additional analysis required.
2.	Peels and pomace produced from fruits and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	
3.	Leaf and yard waste that has not been composted.	
4.	Organic waste matter derived from the drying, cleaning and processing of field and nut crops.	
5.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada), excluding any materials that contain an animal product.	
6.	Aquatic plants.	
7.	Organic waste matter derived from the production of ethanol (plant based mash).	
8.	Any mixture of materials listed in Items 1 to 7.	
9.	Anything listed in Items 1 to 8 that is mixed with agricultural source materials, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	

Table 2: CATEGORY 2 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Leaf and yard waste that has been composted, but does not meet the requirements for Category AA or A compost in Part II of the Compost Standards.	Only if required under section 98.0.16 .
2.	Organic waste matter that contains no meat or fish and is derived from food processing at, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
3.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area of, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
4.	Culled cole crops and onions, and peels and pomace from cole crops and onions, but only if the cole crops and onions have been processed without any use of chemicals, other than food-grade chemicals used only to clean the food, the processing equipment and the surrounding area.	Only if required under section 98.0.16 .
5.	Fruit and vegetables, and peels and pomace from fruit and vegetables, that have been processed with the use of chemicals other than as described in Item 4.	Sodium; other parameters only if required under section 98.0.16 .
6.	Fruit and vegetable processing water that contains no chemicals other than food-grade chemicals.	Sodium; other parameters only if required under section 98.0.16 .
7.	Any mixture of materials listed in Items 1 to 6.	As required under section 98.0.16 .
8.	Anything listed in Items 1 to 7 that is mixed with agricultural source materials, Category 1 NASM, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	As required under section 98.0.16 .

Table 3: CATEGORY 3 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a facility for processing, (a) meat, (b) eggs, or (c) dairy products.	Fats, oils and grease (FOG) and sodium; other parameters only if required under section 98.0.16 .
2.	Paunch manure.	Only if required under section 98.0.16 .
3.	Organic waste matter derived from the production of biodiesel.	Only if required under section 98.0.16 .
4.	Organic waste matter from grease traps and interceptors.	FOG and sodium; other parameters only if required under section 98.0.16 .
5.	Organic waste matter produced in a dissolved air flotation process used for the treatment of wastewater from food or feed processing or preparation facilities.	FOG and sodium; other parameters only if required under section 98.0.16 .
6.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada) that may contain an animal product.	Only if required under section 98.0.16 .
7.	Organic waste matter from the processing of fish.	FOG; other parameters only if required under section 98.0.16 .
8.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a fish processing facility.	Only if required under section 98.0.16 .
9.	Cooked pet food manufacturing waste.	FOG; other parameters only if required under section 98.0.16 .
10.	Pulp and paper biosolids.	Boron; other parameters only if required under section 98.0.16 .
11.	Sewage biosolids or any other material, other than untreated septage, that contains human body waste or results from the processing of materials that include sewage biosolids or human body waste.	Only if required under section 98.0.16 .
11.1	Compost that meets the requirements for Category B compost in Part II of the Compost Standards, other than leaf and yard waste described in Item 1 of Table 2.	Sodium; other parameters only if required under section 98.0.16 .
12.	Any NASM that is not listed in Table 1 or 2.	As required under section 98.0.16 .
13.	Any mixture of materials listed in Items 1 to 12.	As required under section 98.0.16 .
14.	Anything listed in Items 1 to 13 that is mixed with agricultural source materials, Category 1 or Category 2 NASM, commercial fertilizer, compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards, or any other nutrient.	As required under section 98.0.16 .

SCHEDULE 2

PATHOGEN CONTENT OF NASM

Table 1: CP1 NASM that is not sewage biosolids and does not contain human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1 % total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Giardia	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Cryptosporidium	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 2: CP1 NASM that is sewage biosolids or contains human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1% total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Viable Helminth ova	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Total culturable enteric virus	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 3: CP2 NASM

Item	Column 1 Pathogen	Column 2 Geometric mean of samples of aqueous material (containing less than 1% total solids, wet weight) taken during the 4 months before transfer date	Column 3 Geometric mean of samples of non-aqueous material (containing 1% or more total solids, wet weight) taken during the 4 months before transfer date
1.	E. coli	2 million CFU per 100 ml	2 million CFU per gram of total solids, dry weight

The [First Nation name] First Nation Law No. XX
Agricultural Nutrient Land Application Rates Regulation

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have an **Agricultural Nutrient Land Application Rates Regulation**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following Regulation;

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PART I – DEFINITIONS AND INTERPRETATION

Definitions and General

Short Title

1. This regulation may be cited as the “*Nutrient Land Application Rates Regulation*”.

Definitions and general

2. (1) In this Regulation,

“**adverse effect**” is an effect that is one or more of the following:

- (a) Impairment of the quality of the natural environment for any use that can be made of it.
- (b) Injury or damage to property or to plant or animal life.
- (c) Harm or material discomfort to any person.
- (d) An adverse effect on the health of any person.
- (e) Impairment of the safety of any person.
- (f) Rendering any property or plant or animal life unfit for human use.
- (g) Interference with the normal conduct of business.

“**agricultural operation**” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“**agricultural source materials**” or “**ASM**” means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

- 1. Manure produced by farm animals, including associated bedding materials.
- 2. Runoff from farm-animal yards and manure storages.

3. Washwaters from agricultural operations that have not been mixed with human body waste.
4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.
5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario *Nutrient Management Act*;

“application”, in relation to the application of a material to land, does not include the direct deposit onto land of feces or urine by animals;

“Category 1 non-agricultural source materials” or **“Category 1 NASM”** means non-agricultural source materials described in Table 1 of Schedule 2;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 2;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 2;

“CM1”, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 3;

“CM2”, when used in reference to NASM, means that its content of a regulated metal exceeds that of CM1 NASM but does not exceed the concentration set out in Column 2 or 3 of Table 2 of Schedule 3;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled “Ontario Compost Quality Standards”, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“control”, as a verb in relation to land, an agricultural operation or a non-agricultural operation, includes manage and operate;

“dugout pond” means a pond,

- (a) that is constructed entirely within a farm unit,
- (b) that is not connected to surface water,
- (c) that is located more than 100 metres from the nearest surface water or well, and
- (d) to which access by livestock is entirely restricted or is limited so that livestock are only allowed to drink from the pond;

“farm unit” means land consisting of, or designated as, a farm unit under section 6 of the **Nutrient Application Strategies, Plans, and Approvals Regulation**;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.
3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“Nutrient Management Protocol” means,

- (a) the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of this Regulation and dated July 25, 2012, and
- (b) Table 1 (Nutrient Unit Livestock Information Table) and Table 2 (Manure Databank) of the Nutrient Management Tables;

“Nutrient Management Tables” means the document of that name, as amended from time to time, prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the NASM Odour Guide and the Nutrient Management Protocol;

“OC1”, when used in reference to NASM, means that it has an odour detection threshold of less than 500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO1”)

“OC2”, when used in reference to NASM, means that it has an odour detection threshold of 500 or more but less than 1500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO2”)

“OC3”, when used in reference to NASM, means that it has an odour detection threshold of 1500 or more but less than 4500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO3”)

“operation” means an agricultural operation or a non-agricultural operation;

“organic soils” means soils containing more than 17 per cent organic carbon by weight, commonly known as peat, muck, bog or fen soils;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation.

“Traditional Territory” or **“Territory”** means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law.

Surface water

3. (1) In this Regulation,

“**surface water**” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 1. is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and
 2. has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

1. Grassed waterways.
2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
3. Rock chutes and spillways.
4. Roadside ditches that do not contain a continuous or intermittent stream.
5. Temporarily ponded areas that are normally farmed.
6. Dugout ponds.
7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Nutrients

4. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application to Traditional Territories

5. (1) This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part

of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

Application of Regulation

6. (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) of the **Nutrient Application Strategies, Plans, and Approvals Regulation** applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

6.1 For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by implication by the Regulations or by an order made under section 23 or 24 of the Agricultural Nutrient Inspection and Orders Regulation.

PART I - LAND APPLICATION RATES

Manure and Anaerobic Digestion Output

Maximum application rate

7. (1) Each person who is required to collect samples and have them analyzed under section 8 of the *Nutrient Sampling, Analysis, and Quality Standards Regulation* shall calculate the maximum application rate to land for the manure or the anaerobic digestion output in the sample, using the most recently determined concentration under the applicable subsection or the concentrations set out in clause 8 (1) (b) of the *Nutrient Sampling, Analysis, and Quality Standards Regulation*, if applicable.

(2) The maximum application rate to land for the manure or the anaerobic digestion output in the sample must be such that the total plant available phosphate in the nutrients that are applied to land per hectare during any consecutive five-year period does not exceed the greater of,

- (a) the crop production requirements per hectare for that five-year period plus 85 kilograms of phosphate per hectare; and
- (b) the phosphate removed from the land per hectare in the harvested portion of the crop during that five-year period plus 390 kilograms of phosphate per hectare.

(3) The person shall enter the rate into the nutrient management plan.

(4) A nutrient management plan does not come into force until the person who is required to comply with section 8 of the *Nutrient Sampling, Analysis, and Quality Standards Regulation* and this section has complied with those sections.

(5) No person shall apply manure or anaerobic digestion output to land at a rate that exceeds the maximum application rate to land for the manure or anaerobic digestion output.

Non-Agricultural Source Materials — Land Application Rules

General prohibition, requirement of benefit

8. (1) Despite anything else in this Regulation, no person shall apply NASM to land unless at least one of the following conditions is satisfied:

1. In the case of solid or liquid NASM, the amount of total organic matter is more than 15 per cent of the total weight of the NASM.

2. In the case of solid or liquid NASM, the NASM is used to increase the soil pH value.

3. In the case of solid NASM, the total concentration of plant available nitrogen, plant available phosphate and plant available potassium, determined in accordance with the Sampling and Analysis Protocol, is more than 13,000 milligrams per kilogram of NASM, calculated on a dry weight basis.

4. In the case of liquid NASM, the total concentration of plant available nitrogen, plant available phosphate and plant available potassium is more than 140 milligrams per litre of NASM.

5. In the case of liquid NASM, the condition set out in paragraph 4 is not satisfied but the liquid NASM is an aqueous solution or suspension containing more than 99 percent water by weight and is used to irrigate crops during the period that begins on June 15 and ends on September 30 of the same year.

(2) In paragraph 1 of subsection (1),

“total organic matter” means the quantity of material lost on ignition, according to section 4.3.3 of the Sampling and Analysis Protocol, expressed as a percentage of the initial dry weight of the sample

Calculation of maximum application rates

8.0.1. (1) This section and sections 8.0.2 to 8.0.10 apply when a person who is required to collect soil samples and have them analyzed under section 94 intends to apply NASM to land in the course of the agricultural operation.

(2) The person shall calculate the maximum application rate or rates for the specific NASM that is intended to be applied to the land, in accordance with the Nutrient Management Protocol, using the concentrations most recently determined,

(a) under section 10 of the Nutrient Sampling, Analysis, and Quality Standards Regulation, for the soil; and

(b) under section 11 of the Nutrient Sampling, Analysis, and Quality Standards Regulation, for the NASM.

Maximum application rate, PAN

8.0.2. (1) The maximum application rate to land for NASM with reference to plant available nitrogen is a rate such that the plant available nitrogen in the NASM that is applied to the land per hectare, for any 12-month period, does not exceed the lesser of,

- (a) the quantity determined under subsection (2); and
- (b) 200 kilograms per hectare.

(2) The quantity for the purposes of clause (1) (a) is the greater of,

- (a) the crop production requirements for nitrogen, minus plant available nitrogen supplied by other nutrient sources; and
- (b) the quantity of nitrogen removed from the field in the harvested portion of the crop, minus plant available nitrogen supplied by other nutrient sources.

(3) For the purposes of this section, the plant available nitrogen in the NASM that is applied to land shall be calculated in accordance with the formula for plant available nitrogen in section 8.2.4 of the Nutrient Management Protocol.

Maximum application rate, PAP

8.0.3. The maximum application rate to land for NASM with reference to plant available phosphate is a rate such that the total plant available phosphate in the nutrients that are applied to the land per hectare during any five-year period does not exceed the amount of phosphate removed from the land per hectare in the harvested portion of the crop during that period plus 390 kilograms of phosphate per hectare.

Maximum application rates, Category 1 NASM

8.0.4. The person who owns or controls the farm unit on which an agricultural operation is carried on shall comply with one of the following maximum application rates for Category 1 NASM:

- 1. 20 tonnes of NASM per hectare, calculated on a wet weight basis, in any 12-month period.
- 2. The lesser of the rates determined under sections 8.0.2 and 8.0.3.

Maximum application rates, Category 2 and 3 NASM, PAN and PAP

8.0.5. The maximum application rates to land for Category 2 and Category 3 NASM with reference to plant available nitrogen and plant available phosphate are the rates determined under sections 8.0.2 and 8.0.3.

Maximum application rate, Category 2 and 3 NASM, regulated metals

8.0.6. (1) The maximum application rate to land for Category 2 and Category 3 NASM with reference to regulated metals is a rate such that none of the amounts set out in Column 2 of Table 1 of Schedule 1 are exceeded in any five-year period.

(2) No person shall apply Category 2 or Category 3 NASM that is CM2 to land whose soil exceeds the concentration of any regulated metal set out in Column 3 of Table 1 of Schedule 1, unless the application is contemplated in a NASM plan that has been approved under section 21 of the *Nutrient Application Strategies, Plans, and Approvals Regulation*.

(3) A Director may approve a NASM plan that contemplates an application described in subsection (2) if the Director is satisfied that the application will not result in a measurable increase in the concentration of any regulated metal in the soil.

Maximum application rate, Category 2 and 3 NASM, sodium

8.0.7. (1) This section applies with respect to Category 2 and Category 3 NASM of the types listed in Column 1 of Items 5 and 6 of Table 2 of Schedule 2 and Column 1 of Items 1, 4 and 5 of Table 3 of Schedule 2.

(2) This section also applies with respect to Category 2 or Category 3 NASM of a type not described in subsection (1) if a Director requires testing for sodium in accordance with subsection 8.0.10 (3).

(3) The maximum application rate to land for the materials with reference to sodium is a rate such that the amount set out in Column 2 of Table 2 of Schedule 1 opposite the hydrologic soil group to which the land belongs, set out in Column 1 of Table 2 of Schedule 1, is not exceeded in any 12-month period.

Maximum application rate, Category 2 and 3 NASM, FOG

8.0.8. (1) This section applies with respect to Category 3 NASM of the types listed in Column 1 of Items 1, 4, 5, 7 and 9 of Table 3 of Schedule 2.

(2) This section also applies with respect to Category 2 NASM or Thereto Category 3 NASM of a type not described in subsection (1) if a Director requires testing for fats, oils and grease in accordance with subsection 8.0.10 (3).

(3) The maximum application rate to land for the materials with reference to fats, oils and grease is a rate such that the amount set out in Column 2 of Table 3 of Schedule 1 opposite the hydrologic soil group to which the land belongs, set out in Column 1 of Table 3 of Schedule 1, is not exceeded in any 12-month period.

Maximum application rate, Category 2 and 3 NASM, boron

8.0.9 (1) This section applies with respect to Category 3 NASM of the type listed in Column 1 of Item 10 of Table 3 of Schedule 2.

(2) This section also applies with respect to Category 2 NASM or to Category 3 NASM of a type not described in subsection (1) if a Director requires testing for boron in accordance with subsection 8.0.10 (3).

(3) The maximum application rate to land for the materials with reference to boron is a rate such that the amount of boron added to the soil in any 12-month period does not exceed one kilogram of boron per hectare.

Director's decision, additional requirements

8.0.10 (1) This section applies with respect to Category 2 and Category 3 NASM.

(2) When dealing with a NASM plan under section 21 or 24 of the *Nutrient Application Strategies, Plans, and Approvals Regulation*, a Director may act under subsection (3) or under subsections (4) and (5) if he or she considers it necessary to do so in order to,

- (a) prevent, decrease or eliminate an adverse effect; or
- (b) prevent NASM from being managed in a way that is not in accordance with the standards established in this Regulation for OC1, OC2 and OC3 NASM.

(3) The Director may require testing,

- (a) for sodium, as described in subsection 8.0.7 (2);
- (b) for fats, oils and grease, as described in subsection 8.0.8 (2);
- (c) for boron, as described in subsection 8.0.9 (2).

(4) The Director may require testing for any substance not mentioned in section 8.0.6, 8.0.7, 8.0.8 or 8.0.9.

(5) If the Director requires testing under subsection (4), he or she shall also determine,

- (a) rules for sampling and analysis with reference to the substance; and
- (b) the maximum application rate for the substance, or a method for calculating the maximum application rate for NASM with reference to the substance.

Prohibitions

8.0.11 (1) No person shall apply Category 2 or Category 3 NASM to land at a rate that exceeds the applicable maximum application rate determined under section 8.0.2, 8.0.3, 8.0.4, 8.0.5, 8.0.6, 8.0.7, 8.0.8, 8.0.9 or 8.0.10.

(2) No person shall apply Category 2 or Category 3 NASM to land if the concentration for plant available phosphorus in the soil of the land, as determined under sections 93 and 94, exceeds 60 milligrams per litre of soil, unless the application is contemplated in a NASM plan that has been approved under section 21 of the *Nutrient Application Strategies, Plans, and Approvals Regulation*.

(3) No person shall apply Category 2 or Category 3 NASM that is CM2 to land if the existing soil pH value is less than six, unless the application is contemplated in a NASM plan that has been approved under section 21 of the *Nutrient Application Strategies, Plans, and Approvals Regulation*.

(4) No person shall apply Category 2 or Category 3 NASM to organic soils unless the application is contemplated in a NASM plan that has been approved under section 21 of the *Nutrient Application Strategies, Plans, and Approvals Regulation*.

(5) No person shall apply Category 2 or Category 3 NASM to the land of an established golf course.

(6) No person shall apply NASM to which this subsection applies to land at a rate that exceeds 22 tonnes of the NASM per hectare, calculated on a dry weight basis, in any five-year period.

(7) Subsection (6) applies to NASM that is,

- (a) sewage biosolids;
- (b) other materials containing human body waste; or
- (c) other materials that result from the processing of materials that include sewage biosolids or human body waste.

SCHEDULE 1 - PART I TABLES

Table 1: Maximum Application Rates, Regulated Metals

Item	Column 1 — Regulated metal	Column 2 — Maximum addition to soil (in kilograms of regulated metal per hectare/per five years)	Column 3 — Maximum concentration in soil (in milligrams per kilogram of soil, dry weight)
1.	Arsenic	1.4	14
2.	Cadmium	0.27	1.6
3.	Cobalt	2.7	20
4.	Chromium	23.3	120
5.	Copper	13.6	100
6.	Lead	9	60
7.	Mercury	0.09	0.5
8.	Molybdenum	0.8	4
9.	Nickel	3.56	32
10.	Selenium	0.27	1.6
11.	Zinc	33	220

Table 2: Maximum Application Rates, Sodium

Item	Column 1 — Hydrologic soil group	Column 2 — Maximum addition to soil (in kilograms of sodium per hectare/year)
1.	A	200
2.	B	200
3.	C	500
4.	D	500

Table 3: Maximum Application Rates, FOG (Fats, Oils, and Grease)

Item	Column 1 — Hydrologic soil group	Column 2 — Maximum addition to soil (in kilograms of fats, oils and grease per hectare/year)
1.	A	5,000
2.	B	5,000
3.	C	2,500
4.	D	2,500

SCHEDULE 2

CATEGORIES OF NON-AGRICULTURAL SOURCE MATERIALS

Table 1: CATEGORY 1 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Culled fruit and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	No additional analysis required.
2.	Peels and pomace produced from fruits and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	
3.	Leaf and yard waste that has not been composted.	
4.	Organic waste matter derived from the drying, cleaning and processing of field and nut crops.	
5.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada), excluding any materials that contain an animal product.	
6.	Aquatic plants.	
7.	Organic waste matter derived from the production of ethanol (plant based mash).	
8.	Any mixture of materials listed in Items 1 to 7.	
9.	Anything listed in Items 1 to 8 that is mixed with agricultural source materials, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	

Table 2: CATEGORY 2 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Leaf and yard waste that has been composted, but does not meet the requirements for Category AA or A compost in Part II of the Compost Standards.	Only if required under section 98.0.16 .
2.	Organic waste matter that contains no meat or fish and is derived from food processing at, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
3.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area of, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
4.	Culled cole crops and onions, and peels and pomace from cole crops and onions, but only if the cole crops and onions have been processed without any use of chemicals, other than food-grade chemicals used only to clean the food, the processing equipment and the surrounding area.	Only if required under section 98.0.16 .
5.	Fruit and vegetables, and peels and pomace from fruit and vegetables, that have been processed with the use of chemicals other than as described in Item 4.	Sodium; other parameters only if required under section 98.0.16 .
6.	Fruit and vegetable processing water that contains no chemicals other than food-grade chemicals.	Sodium; other parameters only if required under section 98.0.16 .
7.	Any mixture of materials listed in Items 1 to 6.	As required under section 98.0.16 .
8.	Anything listed in Items 1 to 7 that is mixed with agricultural source materials, Category 1 NASM, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	As required under section 98.0.16 .

Table 3: CATEGORY 3 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a facility for processing, (a) meat, (b) eggs, or (c) dairy products.	Fats, oils and grease (FOG) and sodium; other parameters only if required under section 98.0.16 .
2.	Paunch manure.	Only if required under section 98.0.16 .
3.	Organic waste matter derived from the production of biodiesel.	Only if required under section 98.0.16 .
4.	Organic waste matter from grease traps and interceptors.	FOG and sodium; other parameters only if required under section 98.0.16 .
5.	Organic waste matter produced in a dissolved air flotation process used for the treatment of wastewater from food or feed processing or preparation facilities.	FOG and sodium; other parameters only if required under section 98.0.16 .
6.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada) that may contain an animal product.	Only if required under section 98.0.16 .
7.	Organic waste matter from the processing of fish.	FOG; other parameters only if required under section 98.0.16 .
8.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a fish processing facility.	Only if required under section 98.0.16 .
9.	Cooked pet food manufacturing waste.	FOG; other parameters only if required under section 98.0.16 .
10.	Pulp and paper biosolids.	Boron; other parameters only if required under section 98.0.16 .
11.	Sewage biosolids or any other material, other than untreated septage, that contains human body waste or results from the processing of materials that include sewage biosolids or human body waste.	Only if required under section 98.0.16 .
11.1	Compost that meets the requirements for Category B compost in Part II of the Compost Standards, other than leaf and yard waste described in Item 1 of Table 2.	Sodium; other parameters only if required under section 98.0.16 .
12.	Any NASM that is not listed in Table 1 or 2.	As required under section 98.0.16 .
13.	Any mixture of materials listed in Items 1 to 12.	As required under section 98.0.16 .
14.	Anything listed in Items 1 to 13 that is mixed with agricultural source materials, Category 1 or Category 2 NASM, commercial fertilizer, compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards, or any other nutrient.	As required under section 98.0.16 .

SCHEDULE 3 REGULATED METAL CONTENT OF NASM

Table 1: CM1 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	0.13	13
2.	Cadmium	0.03	3
3.	Cobalt	0.34	34
4.	Chromium	2.1	210
5.	Copper	1.0	100
6.	Lead	1.5	150
7.	Mercury	0.008	0.8
8.	Molybdenum	0.05	5
9.	Nickel	0.62	62
10.	Selenium	0.02	2
11.	Zinc	5.0	500

Table 2: CM2 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	1.7	170
2.	Cadmium	0.34	34
3.	Cobalt	3.4	340
4.	Chromium	28.0	2,800
5.	Copper	17.0	1,700
6.	Lead	11.0	1,100
7.	Mercury	0.11	11
8.	Molybdenum	0.94	94
9.	Nickel	4.2	420
10.	Selenium	0.34	34
11.	Zinc	42.0	4,200

The [First Nation name] First Nation Law No. XX
Agricultural Nutrient Application Standards Regulation

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have an **Agricultural Nutrient Application Standards Regulation**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following Regulation;

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PART I – DEFINITIONS AND INTERPRETATION

Definitions and General

Short Title

1. This regulation may be cited as the “*Agricultural Nutrient Application Regulation*”.

Definitions and general

2. (1) In this Regulation,

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“agricultural source materials” or **“ASM”** means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

1. Manure produced by farm animals, including associated bedding materials.
2. Runoff from farm-animal yards and manure storages.
3. Washwaters from agricultural operations that have not been mixed with human body waste.
4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.
5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario *Nutrient Management Act*;

“Agronomy Guide for Field Crops” means the Agronomy Guide for Field Crops, Publication 811, published by the Ministry of Agriculture, Food and Rural Affairs in 2009;

“Category 1 non-agricultural source materials” or **“Category 1 NASM”** means non-agricultural source materials described in Table 1 of Schedule 2;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 2;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 2;

“CM1”, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 3;

“CM2”, when used in reference to NASM, means that its content of a regulated metal exceeds that of CM1 NASM but does not exceed the concentration set out in Column 2 or 3 of Table 2 of Schedule 3;

“commercial, community or institutional use” means any commercial, community or institutional use, including without limitation the use of land for,

- (a) an office building,
- (b) a hotel, motel, hostel or similar type of accommodation,
- (c) an overnight camp or overnight campgrounds,
- (d) indoor recreational or sporting activities,
- (e) indoor gatherings for civic, religious or social purposes,
- (f) indoor performing arts activities,
- (g) a railway station, airport passenger terminal or other embarkation or debarkation point for travellers,
- (h) a day care centre,
 - (i) educational purposes, including a school, college, university, private career college or associated residence,
 - (ii) a health care facility, or
 - (iii) a penitentiary, jail or other place of custody or detention;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled *“Ontario Compost Quality Standards”*, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“control”, as a verb in relation to land, an agricultural operation or a non-agricultural operation, includes manage and operate;

“CP1”, when used in reference to NASM, means that its content of a pathogen named in Column 1 of Table 1 or Table 2 of Schedule 4 does not exceed the level set out in Column 2 or 3 of Table 1 or Column 2 or 3 of Table 2;

“CP2”, when used in reference to NASM, means that,

- (a) its content of *E. coli* exceeds that of CP1 NASM but does not exceed the level set out in Column 2 or 3 of Table 3 of Schedule 4, or
- (b) its content of a pathogen other than *E. coli* named in Column 1 of Table 1 or Table 2 of Schedule 4 exceeds that of CP1 NASM, but its content of *E. coli* does not exceed that of CP2 NASM;

“crop residue” means the unharvested portion of a crop left on the surface of the soil of land after the harvest of a crop grown on the land;

“dugout pond” means a pond,

- (a) that is constructed entirely within a farm unit,
- (b) that is not connected to surface water,
- (c) that is located more than 100 metres from the nearest surface water or well, and
- (d) to which access by livestock is entirely restricted or is limited so that livestock are only allowed to drink from the pond;

“dwelling” means a structure that is used as a residence, including a mobile home or a seasonal home, but not including a structure that is in a residential area;

“farm unit” means land consisting of, or designated as, a farm unit under section 6 of the **Nutrient Application Strategies, Plans, and Approvals Regulation**;

“injection”, in relation to the application of nutrients to land, means the placement of nutrients below the surface of the soil of the land;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.
3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“Nutrient Management Protocol” means,

- (a) the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of this Regulation and dated July 25, 2012, and
- (b) Table 1 (Nutrient Unit Livestock Information Table) and Table 2 (Manure Databank) of the Nutrient Management Tables;

“Nutrient Management Tables” means the document of that name, as amended from time to time, prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the NASM Odour Guide and the Nutrient Management Protocol;

“OC1”, when used in reference to NASM, means that it has an odour detection threshold of less than 500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO1”)

“OC2”, when used in reference to NASM, means that it has an odour detection threshold of 500 or more but less than 1500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO2”)

“OC3”, when used in reference to NASM, means that it has an odour detection threshold of 1500 or more but less than 4500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO3”)

“operation” means an agricultural operation or a non-agricultural operation;

“organic soils” means soils containing more than 17 per cent organic carbon by weight, commonly known as peat, muck, bog or fen soils;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation.

“top”, in relation to a defined channel or a bank of surface water, means,

- (a) the edge of the channel or bank, if there is a sharp change from the steep slope of the channel or bank to the shallower slope of the field area, or
- (b) the normal full extent of the watercourse when it contains the maximum volume of water without flooding, if the change in slope described in clause (a) does not exist;

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law;

“vegetated buffer zone” means an area that,

- (c) has a width of at least three metres, adjacent to the top of the bank of surface water, measured away from the top of the bank of the surface water nearest the buffer zone, and
- (d) is maintained under continuous vegetated cover, including perennial grasses, forbs or trees and perennial forage crops that can be harvested as hay or silage;

“well” includes a gas well, oil well, unused well, test well and water well.

Surface water

3. (1) In this Regulation,

“surface water” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 - 1. is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and
 - 2. has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

- 1. Grassed waterways.
- 2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
- 3. Rock chutes and spillways.
- 4. Roadside ditches that do not contain a continuous or intermittent stream.
- 5. Temporarily ponded areas that are normally farmed.
- 6. Dugout ponds.
- 7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Nutrients

4. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application of Regulation

5. (1) This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

6. (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) of the **Nutrient Application Strategies, Plans, and Approvals Regulation** applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

7. For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by implication by the Regulations or by an order made under section 23 or 24 of the Agricultural Nutrient Inspection and Orders Regulation.

Conflict and Multiple Requirements

Conflict with other instruments

8. Subject to the Law, the requirements of this Regulation are in addition to and independent of the requirements in an approval, order or instrument issued under any other [First Nation name] Law, and in the event of conflict, shall prevail.

Multiple requirements under Regulation

8.1 (1) If the application of this Regulation results in more than one rate of application of specific nutrients to land, the lowest rate of application prevails.

(2) If the application of this Regulation results in more than one setback distance with respect to the application of specific nutrients, the greatest setback distance prevails.

Land application of certain materials

8.2 Nothing in this Regulation authorizes the land application of the following materials:

1. Untreated septage.
2. Non-agricultural source materials whose content of a regulated metal exceeds that of CM2 NASM.
3. Non-agricultural source materials whose content of E. coli exceeds that of CP2 NASM.
4. Non-agricultural source materials whose odour detection threshold exceeds that of OC3 NASM.

PART II – LAND APPLICATION STANDARDS

General

Interpretation

9. (1) In this Part,

“**restricted period**” means the period that begins on December 1 in any year and ends on March 31 of the following year.

(2) In this Part, a reference to surface application does not imply any restriction on later tillage.

Duty of person who owns or controls agricultural operation

10. A person who owns or controls an agricultural operation shall ensure that the requirements of this Part are met in relation to the operation.

Application of Part

11. (1) Sections 22.3 and 22.6 apply in respect of all agricultural operations.

(2) Sections 12 to 22.2, 22.4, 22.5 and 22.7 to 22.13 apply as follows:

1. If this Regulation requires an agricultural operation to have a nutrient management plan, those sections apply to the application of nutrients to land in the course of the operation.
2. If this Regulation requires an agricultural operation to have a NASM plan, those sections apply to the application of nutrients to the relevant NASM application area.
3. If Category 1 NASM is applied to a NASM application area in the course of an agricultural operation, those sections apply to the application of nutrients to the NASM application area during the calendar year in which the Category 1 NASM is applied.

Liquid NASM and Liquid Manure

150-metre zone

12. Sections 13, 14 and 15 apply to every area where liquid NASM or liquid manure are applied within the zone that is 150 metres from the top of the bank of surface water.

Non-agricultural source materials, October 1 to June 14

13. (1) This section applies during the period that begins on October 1 in any year and ends on June 14 of the following year.

(2) No person shall apply liquid non-agricultural source materials to an area,

- (a) if the runoff potential for the area shown on the Table to subsection (3) shows that no application is allowed;
- (b) at a rate in excess of that determined under the Table to subsection (4); or
- (c) if the maximum sustained slope of the area is 12 per cent or greater.

(3) The runoff potential of land for a hydrologic soil group set out in Column 1 of Table 1 under Schedule 1 is set out in Columns 2, 3 or 4 opposite it where a liquid NASM is applied to an area with a maximum sustained slope described in the heading of Columns 2, 3 or 4.

(4) The maximum rate within a 24-hour period for the application of liquid NASM to an area, in the case of an area for which the runoff potential is set out in Column 1 of Table 2 under Schedule 1, is set out,

- (a) in Column 2 opposite it, if the materials are applied to the surface of the area;
- (b) in Column 3 opposite it, if the materials are injected or incorporated into the area or if the area is pre-tilled:

(5) For the purposes of subsection (4), materials are incorporated into an area only if they are incorporated into it within 24 hours of being applied.

(6) For the purposes of subsection (4), an area is pre-tilled only if the tillage occurred not more than seven days before the application of the liquid NASM.

Non-agricultural source materials, June 15 to September 30

14. (1) This section applies during the period that begins on June 15 in any year and ends on September 30 of the same year.

(2) No person shall apply liquid non-agricultural source materials to an area whose maximum sustained slope is 12 per cent or greater.

(3) No person shall apply liquid non-agricultural source materials, at a rate that exceeds 130 cubic metres per hectare within a 24-hour period, to an area whose maximum sustained slope is less than 12 per cent.

(4) Subsections (2) and (3) apply in respect of all hydrologic soil groups.

Manure

15. No person shall apply liquid manure to an area whose maximum sustained slope is 25 per cent or greater.

Wells and Non-Agricultural Land Uses

Setbacks from wells

16. (1) No person shall apply nutrients to land closer than 100 metres to a well.

(2) No person shall apply prescribed materials to land closer than 15 metres to a drilled well that has a depth of at least 15 metres and a watertight casing to a depth of at least six metres below ground level.

(3) No person shall apply the following to land closer than 30 metres to a well, other than a well described in subsection (1) or (2):

1. Agricultural source materials.
2. Non-agricultural source materials that are both CM1 and CP1.

(4) No person shall apply non-agricultural source materials that are CM2 or CP2 to land closer than 90 metres to a well, other than a well described in subsection (1) or (2).

(5) No person shall apply commercial fertilizer or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards to land closer than three metres to a water well that is not a municipal well.

Setbacks and other requirements relating to non-agricultural uses

17. No person shall apply to land NASM that is OC1, OC2 or OC3, except in accordance with the standards set out in Table 3 under Schedule 1.

Ground Water

Minimum depth to ground water, CM1 and CP1 NASM

18. No person shall apply non-agricultural source materials that are both CM1 and CP1 to land unless there is at least 30 centimetres of unsaturated soil at the surface of the land at the time of application.

Minimum depth to ground water, CM2 or CP2 NASM

19. (1) No person shall apply non-agricultural source materials that are CM2 or CP2 to land unless there is at least 30 centimetres of unsaturated soil at the surface of the land at the time of application.

(2) No person shall apply non-agricultural source materials that are CM2 or CP2 to land where there is at least 30 centimetres but not more than 90 centimetres of unsaturated soil at the surface of the land, except in accordance with the standards set out in Table 4 under Schedule 1.

(3) For the purposes of Column 1 of the Table to subsection (2), the level of risk of groundwater contamination shall be established, immediately before the proposed application, in accordance with Table 5 under Schedule 1.

(4) This section does not restrict the application of non-agricultural source materials that are CM2 or CP2 to land where there is more than 90 centimetres of unsaturated soil at the surface of the land.

Application standards, depth to bedrock

20. No person shall apply non-agricultural source materials to land, except in accordance with the standards set out in Table 6 under Schedule 1.

Adjacent Surface Water

Application of ss. 22 and 22.1

21. (1) The following rules govern the application of sections 22 (vegetated buffer zone) and 22.1 (setback from bank):

1. A person who applies NASM that is CM1 and CP1 and is not required to have a nutrient management plan shall comply with section 22 or 22.1.
2. A person who applies NASM that is CM1 and CP1 and is required to have a nutrient management plan shall comply with section 22.
3. A person who applies NASM that is CM2, CP2 or both and is not required to have a nutrient management plan shall comply with section 22.1.
4. A person who applies NASM that is CM2, CP2 or both and is required to have a nutrient management plan shall comply with sections 22 and 22.1.

(2) Subsection (1) prevails in the event of conflict with section 22 or 22.1.

Requirement for vegetated buffer zone

22. (1) No person shall apply nutrients to a field that contains or is adjacent to surface water unless there is a vegetated buffer zone in the field that is adjacent to the surface water and that lies between the surface water and where the nutrients are applied.

(2) Subsection (1) does not apply in relation to the application of nutrients to a field that is composed of organic soils.

(3) No person shall apply nutrients within the vegetated buffer zone except for an amount of commercial fertilizer that is reasonable to establish or maintain the vegetation of the vegetated buffer zone.

(4) For the purposes of subsection (3), a person applies an amount of commercial fertilizer that is reasonable to establish or maintain the vegetation of a vegetated buffer zone if the person applies the fertilizer,

- (a) in accordance with a determination of the concentration of plant available phosphorus and plant available potassium in the soil of the vegetated buffer zone;
- (b) in accordance with the Agronomy Guide for Field Crops; and
- (c) in such a manner that the agronomic balance does not exceed zero.

(5) The determination of the concentration described in clause (4) (a) shall be made using,

- (a) the results of an analysis of a sample of the soil performed in accordance with section 10 of the *Nutrient Sampling, Analysis, and Quality Standards Regulation*; or
- (b) the following concentrations:
 - (i) 101 milligrams of plant available phosphorus per litre of soil,
 - (ii) 251 milligrams of plant available potassium per litre of soil.

(6) No person shall apply materials containing nitrogen and phosphorus to any part of the field, whether or not within the vegetated buffer zone, that is within 13 metres from the top of the nearest bank of the surface water.

Setback from top of nearest bank of surface water

22.1 No person shall apply non-agricultural source materials to a field that contains or is adjacent to surface water, if the application is closer than 20 metres from the top of the nearest bank of the surface water.

Application During Restricted Period and Other Times When Soil is Snow-Covered or Frozen

Definitions

22.2 In sections 22.3, 22.4 and 22.5,

“frozen”, when used in reference to soil, means that a layer of soil with an average minimum depth of five centimetres, located within the top 15 centimetres of the soil, is consolidated by the presence of frozen moisture;

“snow-covered”, when used in reference to soil, means that there is a layer of snow with an average minimum depth of five centimetres.

Prohibition, sewage biosolids, etc.

22.3 (1) No person shall apply nutrients described in subsection (2) to land,

- (a) during the restricted period; or
- (b) at any other time when the soil is snow-covered or frozen.

(2) Subject to subsection (3), subsection (1) applies to,

- (a) sewage biosolids;
- (b) other materials containing human body waste; and
- (c) materials that result from the processing of materials that include sewage biosolids or human body waste.

(3) Subsection (1) does not apply to compost that,

- (a) meets the requirements for Category AA compost in Part II of the Compost Standards; or
- (b) meets the requirements for Category A compost in Part II of the Compost Standards, is made without sewage biosolids and is made without domestic septage as defined in Appendix 3 (Glossary) of the Compost Standards.

Prohibition, vulnerable land

22.4 (1) No person shall apply prescribed materials to land described in subsection (2),

- (a) during the restricted period; or
- (b) at any other time when the soil is snow-covered or frozen.

(2) Subsection (1) applies to,

- (a) land that is subject to flooding once or more every five years according to flood plain mapping provided by the municipality or conservation authority having jurisdiction over the land; and
- (b) land where water collects during a rainstorm or thaw and flows directly into surface water.

(3) For greater certainty, this section does not require a person to create flood plain mapping.

Requirements for application of prescribed materials

22.5 (1) Subject to sections 22.3 and 22.4, no person shall apply prescribed materials to land, except in accordance with this section,

- (a) during the restricted period; or
- (b) at any other time when the soil is snow-covered or frozen.

(2) The following rules govern the application of solid or liquid Category 3 NASM other than sewage biosolids, liquid Category 2 NASM and liquid ASM during the restricted period if the soil is not snow-covered or frozen:

1. Subject to paragraph 2, the application must be done by,
 - i. injection, or
 - ii. spreading and incorporation into the soil within the same day.
2. If at least 30 per cent of the land surface is covered by a living crop or crop residue, as determined in accordance with the Nutrient Management Protocol, the application must be done by one of the methods described in paragraph 1 or by surface application.
3. The setback from the top of the bank of surface water must be 20 metres or more.
4. If the maximum sustained slope of the land is greater than 3 per cent, the materials must not be applied within 100 metres from the top of the bank of surface water.

(3) The following rules govern the application of solid or liquid Category 3 NASM other than sewage biosolids, liquid Category 2 NASM and liquid ASM at any time when the soil is snow-covered or frozen:

1. The application must be done by,
 - i. injection, or
 - ii. spreading and incorporation into the soil within six hours.
2. The setback from the top of the bank of surface water must be 20 metres or more.

3. If the maximum sustained slope of the land is greater than 3 per cent, the materials must not be applied within 100 metres from the top of the bank of surface water. O. Reg. 338/09, s. 43.

(4) The following rules govern the application of solid Category 2 NASM, solid or liquid Category 1 NASM and solid ASM during the restricted period if the soil is not snow-covered or frozen:

1. Subject to paragraph 2, the application must be done by,
 - i. injection, or
 - ii. spreading and incorporation into the soil within the same day.
2. If at least 30 per cent of the land surface is covered by a living crop or crop residue, as determined in accordance with the Nutrient Management Protocol, the application must be done by one of the methods described in paragraph 1 or by surface application.
3. If the materials are solid Category 2 NASM, or solid or liquid Category 1 NASM, the setback from the top of the bank of surface water must be 20 metres or more.
4. If the materials are solid ASM, there is no minimum setback from the top of the bank of surface water.
5. If the maximum sustained slope of the land is greater than 6 per cent, the materials must not be applied within 100 metres from the top of the bank of surface water. O

(5) The following rules govern the application of solid Category 2 NASM, solid or liquid Category 1 NASM and solid ASM at any time when the soil is snow-covered or frozen, if the application is done by injection or by spreading and incorporation into the soil within six hours.

1. If the materials are solid Category 2 NASM, or solid or liquid Category 1 NASM, the setback from the top of the bank of surface water must be 20 metres or more.
2. If the materials are solid ASM, there is no minimum setback from the top of the bank of surface water.
3. If the maximum sustained slope of the land is greater than 6 per cent, the materials must not be applied within 100 metres from the top of the bank of surface water. O. Reg. 338/09, s. 43.

(6) The following rules govern the application of solid ASM at any time when the soil is snow-covered or frozen, if the application is done by surface application:

1. The setback from the top of the bank of surface water must be 100 metres or more.
2. The maximum depth of snow in the area of application must not exceed 15 centimetres.
3. The maximum sustained slope of the area of application must be less than 3 per cent.

Application Methods

High trajectory irrigation guns

22.6. No person shall use a high trajectory irrigation gun capable of spraying liquid more than 10 metres to apply manure or non-agricultural source materials to land except if the material being applied is an aqueous solution or suspension containing more than 99 per cent water by weight.

Direct flow application systems

22.7. (1) No person shall apply manure or non-agricultural source materials directly from a storage facility to land by a direct flow application system unless the system is operated in accordance with this section.

- (2) Two or more operators in voice or electronic contact with each other at all times during the application may operate a direct flow application system if,
- (a) a first operator has a full view of the area of land to which the manure or non-agricultural source materials are being applied; and
 - (b) a second operator is close enough to the system to shut it down within one minute after being advised by the first operator that a problem event has occurred.
- (3) One operator may operate a direct flow application system if the operator has a full view of the area of land to which the manure or non-agricultural source materials are being applied and if,
- (a) the operator is close enough to the system to shut it down within one minute after observing that a problem event has occurred; or
 - (b) the application system is,
 - (i) linked to a remote control system that allows the operator to shut down the application system within one minute after observing that a problem event has occurred, and
 - (ii) designed to shut down automatically within one minute after it ceases to receive a signal from the remote control system.
- (4) Each person who uses a direct flow application system shall ensure that the system is designed and operated so that when it is shut down no manure or non-agricultural source materials continue to flow from the storage facility by siphoning or other means.
- (5) In this section,

“problem event” means any of the following events:

1. Manure or non-agricultural source materials are not being delivered to the application part of the system as intended by the person in charge of the operation of the system.
2. Manure or non-agricultural source materials are not being applied in accordance with the nutrient management plan or NASM plan for the operation in the course of which they are applied to land.
3. The direct flow application system fails, resulting in manure or non-agricultural source materials escaping into the natural environment otherwise than as intended by the person in charge of operating the system.

Notice re Application of Category 2 or Category 3 NASM

Notice

22.8. No person shall apply Category 3 NASM, or Category 2 NASM that is CM2, to land unless written advance notice is given to the local district office of the Ministry of the Environment in whose territory the land is located, in accordance with the following rules:

1. The notice shall,
 - i. identify the specific day or days on which the application is to take place, in which case it shall be given at least 24 hours and not more than seven days before the start of the application, or

- ii. identify the week during which the application is to take place, in which case it shall be given at least 24 hours and not more than seven days before the first day of the identified week.
2. The notice shall,
- i. include the name of the individual who will apply the NASM and his or her contact information,
 - ii. if the individual acts as an employee of or authorized agent for a corporation, include the corporation's name and contact information,
 - iii. identify the specific NASM that is to be applied,
 - iv. identify the land by lot and concession, and
 - v. give an estimate of the number of hours or days during which the application will continue.

Miscellaneous

Particles and foreign objects

22.9. No person shall apply NASM to land if,

- (a) its content of glass, metallic objects, plastic and other foreign objects exceeds 2 per cent, calculated on a dry weight basis;
- (b) its content of plastic exceeds 0.5 per cent, calculated on a dry weight basis; or
- (c) in the case of Category 2 or Category 3 NASM, it contains particles of any material that will not pass through a screen whose largest opening has an area of 2.5 square centimetres.

Ponding

22.10. Any person who applies NASM to land shall take all reasonable steps to ensure that the NASM does not pond on the surface of the NASM application area or on the surface of other land.

Discharge to surface water or adjoining land

22.11. Any person who applies NASM to land or stores NASM on land shall take all reasonable steps to ensure that the NASM is not discharged to surface water or to adjoining land.

SCHEDULE 1 PART II TABLES

Table 1: RUNOFF POTENTIAL

Column 1 Hydrologic soil group	Column 2 Maximum sustained slope of at least 3% but less than 6%	Column 3 Maximum sustained slope of at least 6% but less than 9%	Column 4 Maximum sustained slope of at least 9% but less than 12%
A	Very low	Low	High
B	Low	Moderate	High
C	Moderate	High	No application allowed
D	High	High	No application allowed

Table 2: MAXIMUM APPLICATION RATE

Column 1 Runoff potential of land	Column 2 Maximum rate of application within 24-hour period if materials are applied to surface of area, in cubic metres per hectare	Column 3 Maximum rate of application within 24-hour period if materials are injected or incorporated into area or if area is pre-tilled, in cubic metres per hectare
High	50	75
Moderate	75	100
Low	100	130
Very low	130	150

Table 3: SETBACKS AND OTHER REQUIREMENTS FOR APPLICATION OF NASM THAT IS OC1, OC2 OR OC3, RELATING TO NON-AGRICULTURAL USES

Item	Column 1 Odour category of NASM	Column 2 Requirements for dwelling	Column 3 Requirements for residential areas and commercial, community or institutional uses
1.	OC1	No application is permitted within 25 metres of a dwelling. No restrictions beyond the 25-metre perimeter.	No application is permitted within 50 metres of the residential area or commercial, community or institutional use. No restrictions beyond the 50-metre perimeter.
2.	OC2	No application is permitted within 25 metres of the dwelling. In the zone that is at least 25 metres but not more than 90 metres away from the dwelling, application is permitted, but only by, (i) injection, or (ii) spreading and incorporation within six hours. No restrictions beyond the 90-metre perimeter.	No application is permitted within 50 metres of the residential area or commercial, community or institutional use. In the zone that is at least 50 metres but not more than 450 metres away from the residential area or commercial, community or institutional use, application is permitted, but only by, (i) injection, or (ii) spreading and incorporation within six hours. No restrictions beyond the 450-metre perimeter.
3.	OC3	No application is permitted within 100 metres of the dwelling. In the zone that is at least 100 metres but not more than 450 metres away from the dwelling, application is permitted, but only by, (i) injection, or (ii) spreading and incorporation within six hours, but only if the physical properties of the NASM are such that injection is not possible. In the zone that is more than 450 metres away from the dwelling, application is permitted, but only by,	No application is permitted within 200 metres of the residential area or commercial, community or institutional use. In the zone that is at least 200 metres but not more than 900 metres away from the residential area or commercial, community or institutional use, application is permitted, but only by, (i) injection, or (ii) spreading and incorporation within six hours, but only if the physical properties of the NASM are such that injection is not possible.

		(i) injection, or (ii) spreading and incorporation into the soil within 24 hours.	In the zone that is more than 900 metres away from the residential area or commercial, community or institutional use, application is permitted, but only by, (i) injection, or (ii) spreading and incorporation into the soil within 24 hours.
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Table 4: APPLICATION STANDARDS FOR CM2 OR CP2 NASM BASED ON RISK OF GROUND WATER CONTAMINATION

Item	Column 1 Level of risk of ground water contamination	Column 2 Standard for surface application of liquid NASM	Column 3 Standard for injection of liquid NASM	Column 4 Standard for surface application of solid NASM
1.	High	No surface application is permitted.	No injection is permitted.	Surface application is permitted if both of the following conditions are satisfied: 1. The land is pre-tilled no more than 7 days before the application. 2. The maximum rate of application is 18 dry tonnes per hectare per 48 hours.
2.	Moderate	Surface application is permitted if both of the following conditions are satisfied: 1. The land is pre-tilled no more than 7 days before the application. 2. The maximum rate of application is 40 cubic metres per hectare per 48 hours.	No injection is permitted.	Surface application is permitted if one of the following conditions is satisfied: 1. The land is pre-tilled no more than 7 days before the application. 2. The maximum rate of application is 18 dry tonnes per hectare per 48 hours.
3.	Low	Surface application is permitted if one of the following conditions is satisfied: 1. The land is pre-tilled no more than 7 days before application. 2. The maximum rate of application is 40 cubic metres per hectare per 48 hours.	No injection is permitted.	Surface application is permitted if the maximum rate of application is 27 dry tonnes per hectare per 48 hours.
4.	Very low, if land is tile drained	Surface application is permitted if one of the following conditions is satisfied: 1. The land is pre-tilled no more than 7 days before application. 2. The maximum rate of application is 40 cubic metres per hectare per 48 hours.	Injection is permitted if the maximum rate of application is 40 cubic metres per hectare per 48 hours.	No restriction.
5.	Very low, if land is not tile drained	No restriction.	No restriction.	No restriction.

Table 5: RISK OF GROUND WATER CONTAMINATION

Item	Column 1 Hydrologic soil group	Level of risk of ground water contamination	
		Column 2 Depth of unsaturated soil at least 30 cm but not more than 60 cm	Column 3 Depth of unsaturated soil more than 60 but not more than 90 cm
1.	A	High	Moderate
2.	B	Moderate	Low
3.	C	Low	Very low
4.	D	Low	Very low

Table 6: APPLICATION STANDARDS, DEPTH TO BEDROCK

Item	Column 1 Depth to bedrock	Column 2 Liquid NASM that is both CM1 and CP1	Column 3 Liquid NASM that is CM2 or CP2	Column 4 Solid NASM that is both CM1 and CP1	Column 5 Solid NASM that is CM2 or CP2
1.	Less than 30	No application is	No application is permitted.	No application is permitted.	No application is permitted.

	centimetres	permitted.			
2.	30 centimetres or more, but less than 50 centimetres	1. Subject to 2 and 3, application is permitted, (a) at a rate of less than 40 cubic metres per hectare per 48 hours; or (b) at a rate not exceeding 60 cubic metres per hectare per 48 hours, if the land is pre-tilled no more than 7 days before the application. 2. No application is permitted during the restricted period. 3. Application by injection is not permitted.	No application is permitted.	1. Subject to 2, application is permitted, (a) at a rate of less than 18 dry tonnes per hectare per 48 hours; or (b) at a rate not exceeding 27 dry tonnes per hectare per 48 hours, if the land is pre-tilled no more than 7 days before the application. 2. No application is permitted during the restricted period.	No application is permitted.
3.	50 centimetres or more, but less than 100 centimetres	There is no restriction based on depth to bedrock.	1. Subject to 2, application is permitted, (a) at a rate of less than 40 cubic metres per hectare per 48 hours; or (b) at a rate not exceeding 60 cubic metres per hectare per 48 hours, if the land is pre-tilled no more than 7 days before the application. 2. Application by injection is not permitted.	There is no restriction based on depth to bedrock.	Application is permitted, (a) at a rate of less than 18 dry tonnes per hectare per 48 hours; or (b) at a rate not exceeding 27 dry tonnes per hectare per 48 hours, if the land is pre-tilled no more than 7 days before the application.
4.	100 centimetres or more	There is no restriction based on depth to bedrock.	There is no restriction based on depth to bedrock.	There is no restriction based on depth to bedrock.	There is no restriction based on depth to bedrock.

SCHEDULE 2

CATEGORIES OF NON-AGRICULTURAL SOURCE MATERIALS

Table 1: CATEGORY 1 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Culled fruit and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	No additional analysis required.
2.	Peels and pomace produced from fruits and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	
3.	Leaf and yard waste that has not been composted.	
4.	Organic waste matter derived from the drying, cleaning and processing of field and nut crops.	
5.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada), excluding any materials that contain an animal product.	
6.	Aquatic plants.	
7.	Organic waste matter derived from the production of ethanol (plant based mash).	
8.	Any mixture of materials listed in Items 1 to 7.	
9.	Anything listed in Items 1 to 8 that is mixed with agricultural source materials, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	

Table 2: CATEGORY 2 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Leaf and yard waste that has been composted, but does not meet the requirements for Category AA or A compost in Part II of the Compost Standards.	Only if required under section 98.0.16 .
2.	Organic waste matter that contains no meat or fish and is derived from food processing at, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
3.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area of, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
4.	Culled cole crops and onions, and peels and pomace from cole crops and onions, but only if the cole crops and onions have been processed without any use of chemicals, other than food-grade chemicals used only to clean the food, the processing equipment and the surrounding area.	Only if required under section 98.0.16 .
5.	Fruit and vegetables, and peels and pomace from fruit and vegetables, that have been processed with the use of chemicals other than as described in Item 4.	Sodium; other parameters only if required under section 98.0.16 .
6.	Fruit and vegetable processing water that contains no chemicals other than food-grade chemicals.	Sodium; other parameters only if required under section 98.0.16 .
7.	Any mixture of materials listed in Items 1 to 6.	As required under section 98.0.16 .
8.	Anything listed in Items 1 to 7 that is mixed with agricultural source materials, Category 1 NASM, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	As required under section 98.0.16 .

Table 3: CATEGORY 3 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a facility for processing, (a) meat, (b) eggs, or (c) dairy products.	Fats, oils and grease (FOG) and sodium; other parameters only if required under section 98.0.16 .
2.	Paunch manure.	Only if required under section 98.0.16 .
3.	Organic waste matter derived from the production of biodiesel.	Only if required under section 98.0.16 .
4.	Organic waste matter from grease traps and interceptors.	FOG and sodium; other parameters only if required under section 98.0.16 .
5.	Organic waste matter produced in a dissolved air flotation process used for the treatment of wastewater from food or feed processing or preparation facilities.	FOG and sodium; other parameters only if required under section 98.0.16 .
6.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada) that may contain an animal product.	Only if required under section 98.0.16 .
7.	Organic waste matter from the processing of fish.	FOG; other parameters only if required under section 98.0.16 .
8.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a fish processing facility.	Only if required under section 98.0.16 .
9.	Cooked pet food manufacturing waste.	FOG; other parameters only if required under section 98.0.16 .
10.	Pulp and paper biosolids.	Boron; other parameters only if required under section 98.0.16 .
11.	Sewage biosolids or any other material, other than untreated septage, that contains human body waste or results from the processing of materials that include sewage biosolids or human body waste.	Only if required under section 98.0.16 .
11.1	Compost that meets the requirements for Category B compost in Part II of the Compost Standards, other than leaf and yard waste described in Item 1 of Table 2.	Sodium; other parameters only if required under section 98.0.16 .
12.	Any NASM that is not listed in Table 1 or 2.	As required under section 98.0.16 .
13.	Any mixture of materials listed in Items 1 to 12.	As required under section 98.0.16 .
14.	Anything listed in Items 1 to 13 that is mixed with agricultural source materials, Category 1 or Category 2 NASM, commercial fertilizer, compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards, or any other nutrient.	As required under section 98.0.16 .

SCHEDULE 3 REGULATED METAL CONTENT OF NASM

Table 1: CM1 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	0.13	13
2.	Cadmium	0.03	3
3.	Cobalt	0.34	34
4.	Chromium	2.1	210
5.	Copper	1.0	100
6.	Lead	1.5	150
7.	Mercury	0.008	0.8
8.	Molybdenum	0.05	5
9.	Nickel	0.62	62
10.	Selenium	0.02	2
11.	Zinc	5.0	500

Table 2: CM2 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	1.7	170
2.	Cadmium	0.34	34
3.	Cobalt	3.4	340
4.	Chromium	28.0	2,800
5.	Copper	17.0	1,700
6.	Lead	11.0	1,100
7.	Mercury	0.11	11
8.	Molybdenum	0.94	94
9.	Nickel	4.2	420
10.	Selenium	0.34	34
11.	Zinc	42.0	4,200

SCHEDULE 4 PATHOGEN CONTENT OF NASM

Table 1: CP1 NASM that is not sewage biosolids and does not contain human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1 % total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Giardia	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Cryptosporidium	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 2: CP1 NASM that is sewage biosolids or contains human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1% total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Viable Helminth ova	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Total culturable enteric virus	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 3: CP2 NASM

Item	Column 1 Pathogen	Column 2 Geometric mean of samples of aqueous material (containing less than 1% total solids, wet weight) taken during the 4 months before transfer date	Column 3 Geometric mean of samples of non-aqueous material (containing 1% or more total solids, wet weight) taken during the 4 months before transfer date
1.	E. coli	2 million CFU per 100 ml	2 million CFU per gram of total solids, dry weight

The [First Nation name] First Nation Law No. XX
Agricultural Nutrient Inspection and Orders Regulation

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have an **Agricultural Nutrient Inspection and Orders Regulation**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following Regulation;

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Definitions and Interpretation

Short Title:

1. This by-law may be cited as the *“Inspection and Orders Regulation”*.

Definitions and general

2. (1) In this Regulation,

“adverse effect” is an effect that is one or more of the following:

- (a) Impairment of the quality of the natural environment for any use that can be made of it.
- (b) Injury or damage to property or to plant or animal life.
- (c) Harm or material discomfort to any person.
- (d) An adverse effect on the health of any person.
- (e) Impairment of the safety of any person.
- (f) Rendering any property or plant or animal life unfit for human use.
- (g) Interference with the normal conduct of business.

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“agricultural source materials” or **“ASM”** means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

- 1. Manure produced by farm animals, including associated bedding materials.
- 2. Runoff from farm-animal yards and manure storages.
- 3. Washwaters from agricultural operations that have not been mixed with human body waste.
- 4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.

5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario Nutrient Management Act;

“Agronomy Guide for Field Crops” means the Agronomy Guide for Field Crops, Publication 811, published by the Ministry of Agriculture, Food and Rural Affairs in 2009;

“application”, in relation to the application of a material to land, does not include the direct deposit onto land of feces or urine by animals;

“aquifer” means an underground formation of saturated permeable rock or saturated loose material including soil that can produce useable quantities of water when tapped by a well;

“Category 1 non-agricultural source materials” or **“Category 1 NASM”** means non-agricultural source materials described in Table 1 of Schedule 4 of O. Reg. 267/03;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 4 of O. Reg. 267/03;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 4; **“CM1”**, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 5 of O. Reg. 267/03; (**“TM1”**)

“CM1”, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 5 of O. Reg. 267/03; (**“TM1”**)

“CM2”, when used in reference to NASM, means that its content of a regulated metal exceeds that of CM1 NASM but does not exceed the concentration set out in Column 2 or 3 of Table 2 of Schedule 5 of O. Reg. 267/03; (**“TM2”**)

“commercial, community or institutional use” means any commercial, community or institutional use, including without limitation the use of land for,

1. an office building,
2. a hotel, motel, hostel or similar type of accommodation,
3. an overnight camp or overnight campgrounds,
4. indoor recreational or sporting activities,
5. indoor gatherings for civic, religious or social purposes,
6. indoor performing arts activities,
7. a railway station, airport passenger terminal or other embarkation or disembarkation point for travellers,
8. a day care centre,
 - (a) educational purposes, including a school, college, university, private career college or associated residence,
 - (b) a health care facility, or
 - (c) a penitentiary, jail or other place of custody or detention;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled “Ontario Compost Quality Standards”, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“contingency plan” means a proposal in a nutrient management strategy or plan for dealing with,

- (a) an excess of prescribed materials or nutrients, if the amount of prescribed materials or nutrients generated or received at a farm unit is greater than that otherwise provided for by the strategy or plan,
- (b) an excess of prescribed materials or nutrients, if the amount of prescribed materials or nutrients requiring storage prior to use exceeds or is anticipated to exceed the storage capacity available for prescribed materials or nutrients otherwise provided for by the strategy or plan,
- (c) unanticipated releases of prescribed materials or nutrients from storage or during transport or application,
- (d) inability to store, apply or otherwise use prescribed materials or nutrients as otherwise provided for by the strategy or plan, as a result of weather conditions or unavailability of equipment, or
- (e) any other contingency requiring the handling or storage of prescribed materials or nutrients in an emergency;

“control”, as a verb in relation to land, an agricultural operation or a non-agricultural operation, includes manage and operate;

“CP1”, when used in reference to NASM, means that its content of a pathogen named in Column 1 of Table 1 or Table 2 of Schedule 6 does not exceed the level set out in Column 2 or 3 of Table 1 or Column 2 or 3 of Table 2 of O. Reg. 267/03; (“TP1”)

“CP2”, when used in reference to NASM, means that,

- (a) its content of E. coli exceeds that of CP1 NASM but does not exceed the level set out in Column 2 or 3 of Table 3 of Schedule 6, of O. Reg. 267/03 or
- (b) its content of a pathogen other than E. coli named in Column 1 of Table 1 or Table 2 of Schedule 6 of O. Reg. 267/03 exceeds that of CP1 NASM, but its content of E. coli does not exceed that of CP2 NASM; (“TP2”)

“crop residue” means the unharvested portion of a crop left on the surface of the soil of land after the harvest of a crop grown on the land;

“Director” means a Director appointed under subsection 2 (2);

“Drainage Guide” means the Drainage Guide for Ontario, Publication 29, published by the Ministry of Agriculture, Food and Rural Affairs in 2007;

“dugout pond” means a pond,

- (a) that is constructed entirely within a farm unit,
- (b) that is not connected to surface water,
- (c) that is located more than 100 metres from the nearest surface water or well, and

(d) to which access by livestock is entirely restricted or is limited so that livestock are only allowed to drink from the pond;

“dwelling” means a structure that is used as a residence, including a mobile home or a seasonal home, but not including a structure that is in a residential area;

“earth” means inorganic components of the earth’s crust such as clay, silt, sand, gravel or any mixture of those components and may contain small amounts of organic materials;

“farm unit” means land consisting of, or designated as, a farm unit under section 6;

“generator” means a person who owns or controls an operation in the course of which prescribed materials are generated, and includes an intermediate generator;

“injection”, in relation to the application of nutrients to land, means the placement of nutrients below the surface of the soil of the land;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.
3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“Nutrient Management Protocol” means,

- (a) the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of this Regulation and dated July 25, 2012, and
- (b) Table 1 (Nutrient Unit Livestock Information Table) and Table 2 (Manure Databank) of the Nutrient Management Tables;

“Nutrient Management Tables” means the document of that name, as amended from time to time, prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the NASM Odour Guide and the Nutrient Management Protocol;

“O. Reg. 267/03” means the Ontario Regulation 267/03 (General) made under the Ontario *Nutrient Management Act*;

“OC1”, when used in reference to NASM, means that it has an odour detection threshold of less than 500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO1”)

“OC2”, when used in reference to NASM, means that it has an odour detection threshold of 500 or more but less than 1500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO2”)

“OC3”, when used in reference to NASM, means that it has an odour detection threshold of 1500 or more but less than 4500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO3”);

“operation” means an agricultural operation or a non-agricultural operation;

“organic soils” means soils containing more than 17 percent organic carbon by weight, commonly known as peat, muck, bog or fen soils;

“owner” means any person who has possession of land or a building on the [First Nation name] First Nation including leased land;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation;

“Sampling and Analysis Protocol” means the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the *General*, O Reg 267/03 regulation under the *Nutrient Management Act, 2002, SO 2002, c 4* and dated July 25, 2012;

“top”, in relation to a defined channel or a bank of surface water, means,

- (a) the edge of the channel or bank, if there is a sharp change from the steep slope of the channel or bank to the shallower slope of the field area, or
- (b) the normal full extent of the watercourse when it contains the maximum volume of water without flooding, if the change in slope described in clause (a) does not exist;

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law;

“vegetated buffer zone” means an area that,

- (a) has a width of at least three metres, adjacent to the top of the bank of surface water, measured away from the top of the bank of the surface water nearest the buffer zone, and
- (b) is maintained under continuous vegetated cover, including perennial grasses, forbs or trees and perennial forage crops that can be harvested as hay or silage;

“well” includes a gas well, oil well, unused well, test well and water well.

Surface water

2.1. (1) In this Regulation,

“surface water” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 - (a) is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and
 - (b) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

1. Grassed waterways.
2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
3. Rock chutes and spillways.
4. Roadside ditches that do not contain a continuous or intermittent stream.
5. Temporarily ponded areas that are normally farmed.
6. Dugout ponds.
7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Directors

2.2 (2) The Council may in writing appoint as Directors any person.

Nutrients

3. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application of Regulation

4. This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

4.1 (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

5. For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by implication by the Regulations or by an order made under section 23 or 24.

Inspections

Identification

6. On request, a by-law officer who exercises a power under this Law shall identify himself or herself as a by-law officer, either by producing a copy of his or her designation or in some other manner, and shall explain the purpose of the exercise of the power.

Inspection without warrant

7. (1) For the purposes of the administration of the Agricultural Nutrient Management Law and its regulations, a by-law officer may, without warrant or court order, enter and inspect, in accordance with this section, any land or premises that,

- (a) are used by, or are part of, an agricultural operation or other operation regulated under the Agricultural Nutrient Management law; or
- (b) the officer believes on reasonable grounds contain documents relating to an agricultural operation or other operation regulated under the Agricultural Nutrient Management Law.

Dwellings

(2) A by-law officer shall not exercise a power conferred by this section to enter a room actually used as a dwelling without the consent of the occupier except under the authority of an order issued under section 10.

Time of entry

(3) A by-law officer shall not exercise a power conferred by this section to enter and inspect land or premises without a warrant or court order except during daylight hours or at any other time during which work is being carried out on the land or at the premises.

Exception

(4) Despite subsection (3), a by-law officer may exercise a power conferred by this section to enter and inspect land or premises without a warrant or court order if delay in exercising the power would result in,

- (a) danger to the health or safety of any person;
- (b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it;
- (c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life; or
- (d) the disappearance or deterioration of evidence that the inspection could produce.

Powers on inspection

(5) During an inspection made under subsection (1), a by-law officer may,

- (a) make necessary excavations;
- (b) require that any thing be operated, used or set in motion under conditions specified by the officer;
- (c) take samples for analysis;
- (d) conduct tests or take measurements;
- (e) examine, record or copy any document or data, in any form, by any method;
- (f) record the condition of a place or the natural environment by means of photograph, video recording or other visual recording;
- (g) require the production of any document or data, in any form, required to be kept under the Agricultural Nutrient Management Law or its regulations and of any other document or data, in any form, related to the purposes of the inspection;
- (h) remove from a place documents or data, in any form, produced under clause (g) for the purpose of making copies; and
- (i) make reasonable inquiries of any person, orally or in writing.

Records

(6) A record made under clause (5) (f) must be made in a manner that does not intercept any private communication and that accords with reasonable expectations of privacy.

Removal of documents or data

(7) A by-law officer shall not remove documents or data under clause (5) (h) without giving a receipt for them and shall promptly return the documents or data to the person who produced them.

Power to exclude persons

(8) A by-law officer who exercises the power set out in clause (5) (i) may exclude from the questioning any person except counsel for the individual being questioned.

Inspection of vehicles and vessels

8. (1) In this section,

“vehicle” includes a trailer or other equipment attached to the vehicle.

Requirement to stop

(2) For the purposes of the administration of the Agricultural Nutrient Management Law and the regulations, a by-law officer may signal a vehicle or vessel to stop.

Compliance

(3) On the by-law officer’s signal to stop, the operator of the vehicle or vessel shall immediately come to a safe stop.

Signal to stop

(4) For the purposes of this section, a signal to stop includes,

- (a) intermittent flashes of red light, in the case of a vehicle;
- (b) intermittent flashes of blue light, in the case of a vessel; and
- (c) a hand signal to stop by a by-law officer who is readily identifiable as a by-law officer.

Sign to report

(5) Where a clearly marked sign is posted indicating that a class of vehicles or vessels should report to a certain place in the vicinity of the sign, the operator of a vehicle or vessel that passes the sign and that falls within the class of vehicles or vessels indicated shall report forthwith to the place the sign directs.

Inquiries and inspection

(6) Where the operator of a vehicle or vessel stops under subsection (3) or reports under subsection (5), the by-law officer may make any reasonable inquiries of the operator and the operator shall produce for inspection any documents related to the operation or ownership of the vehicle or vessel, including licences, permits and any documents that are required to be kept by the law of any jurisdiction in relation to the carriage of any cargo or container.

Means of containment

(7) Based on the questioning or examination of documents conducted under subsection (6), the by-law officer may, without warrant or court order, inspect any means of containment that the officer reasonably believes is being used for the handling or transportation of a thing the handling or transportation of which is governed or regulated under the Agricultural Nutrient Management Law.

Opening

(8) As part of an inspection under subsection (7), the by-law officer may open or require the operator to open any cargo hold, container or other means of containment.

Powers of inspection

(9) During an inspection conducted under subsection (6) or (7), the by-law officer may exercise any powers under subsection 7 (5) that are reasonably required for the administration of the Agricultural Nutrient Management Law or its regulations.

Same

(10) Subsections 7 (6), (7) and (8) apply to the exercise of a power under subsection (9).

Power to administer other Laws

9. A by-law officer who exercises any power set out in section 7, 8 or 17 may, if the by-law officer is designated as such under the ...Law, as the case may be, do anything authorized by,

(a) section of the ... Law;

Order for entry or inspection

10. (1) A justice may issue an order authorizing a by-law officer to do anything described in subsection 11 (1) or (5) or 12 (2), (6), (7), (8) or (9) if the justice is satisfied, on evidence under oath by a by-law officer, that there are reasonable grounds to believe that it is appropriate for the administration of the Agricultural Nutrient Management Law or its regulations for the officer to do anything described in subsection 7 (1) or (5) or 8 (2), (6), (7), (8) or (9) and that the officer may not be able to effectively carry out his or her duties without an order under this section because,

- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
- (b) a person has prevented the by-law officer from doing anything described in subsection 7 (1) or (5) or 8 (2), (6), (7), (8) or (9);
- (c) there are reasonable grounds to believe that a person may prevent a by-law officer from doing anything described in subsection 7 (1) or (5) or 8 (2), (6), (7), (8) or (9);
- (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the officer to obtain an order under this section without delay if access is denied; or
- (e) there are reasonable grounds to believe that an attempt by the officer to do anything described in subsection 7 (1) or (5) or 8 (2), (6), (7), (8) or (9) without the order might not achieve the purpose of the thing or might endanger human health or safety, property or the natural environment.

Same

(2) Subsections 7 (6), (7) and (8) apply to an inspection under an order under this section.

Expiry

(3) Unless renewed, an order under this section expires on the earlier of the day specified for the purpose in the order and the day that is 30 days after the date on which the order is made.

Renewal

(4) An order under this section may be renewed in the circumstances in which an order may be made under subsection (1), before or after expiry, for one or more periods each of which is not more than 30 days.

Time of execution

(5) An order under this section shall be carried out between 6 a.m. and 9 p.m., unless the order otherwise authorizes.

Application without notice

(6) An order under this section may be issued or renewed on application without notice.

Condition to permit inspections

11. It is a condition of every licence or approval that the holder must forthwith on request permit by-law officers to carry out inspections authorized by the following provisions of any place, other than any room actually used as a dwelling, to which the licence or approval relates:

1. Section 7, 8 or 10 of this Regulation.
2. Section ... of the ... Law.

Order to prohibit entry

12. (1) A by-law officer may by order prohibit entry into all or part of any land or place or prohibit the use of, interference with, disruption of, or destruction of any thing in any of the following circumstances:

1. During an inspection under section 7, 8 or 10.
2. During the time required for the officer to obtain an order under section 10.

Requirements for order

(2) A by-law officer shall not issue an order under subsection (1) unless the officer reasonably believes that,

- (a) in the case of an order prohibiting entry, there is on the land or in the place a thing that will afford evidence of an offence under the Agricultural Nutrient Management Law and regulations;
- (b) in the case of an order prohibiting the use of, interference with, disruption of, or destruction of a thing, the thing will afford evidence of an offence under the Agricultural Nutrient Management Law and regulations; or
- (c) in the case of an order prohibiting entry or an order prohibiting the use of, interference with, disruption of, or destruction of a thing, there is a discharge or a likelihood of discharge of materials containing nutrients into the natural environment from the land, place or thing and an adverse effect described in subsection (3) has resulted or is likely to result from the discharge.

Effect

(3) The adverse effect mentioned in clause (2) (c) is an effect that is one or more of the following:

1. Impairment of the quality of the natural environment for any use that can be made of it.
2. Injury or damage to property or to plant or animal life.
3. Harm or material discomfort to any person.
4. An adverse effect on the health of any person.
5. Impairment of the safety of any person.
6. Rendering any property or plant or animal life unfit for human use.
7. Interference with the normal conduct of business.

Notice of order

(4) The by-law officer shall give notice of the order in the manner that the officer considers appropriate in the circumstances.

Contents of notice

(5) Notice of the order shall include an explanation of the rights provided by subsections (7) and (8).

Order not effective where no notice

(6) An order described in subsection (1) is not effective in any court proceeding against a person if the person satisfies the court that the person neither knew nor should have known of the order.

Request for rescission

(7) A person aggrieved by the order may make an oral or written request to the Director to rescind it and may make oral or written submissions to the Director in support of the request.

Powers of Director

(8) The Director shall give prompt consideration to a request or submissions made under subsection (7) and may rescind the order.

Same

(9) For the purposes of subsection (8), the Director may substitute the Director's own opinion for that of the by-law officer.

Rescission of order

(10) A Director who rescinds an order under subsection (8) shall give those directions to a by-law officer that the Director considers appropriate to bring the rescission to the attention of persons affected.

No stay

(11) A request for rescission of an order described in subsection (1) does not stay the order, unless the Director orders otherwise in writing.

Duration of order

(12) An order described in subsection (1) shall be effective,

- (a) subject to clause (b), for the shorter of the length of time necessary to complete the inspection or search mentioned in that subsection or a period not exceeding two days excluding holidays; or
- (b) where the inspection or search mentioned in subsection (1) is under an order under section 10 of this Regulation and a time limit for the inspection or search is specified in the order or warrant, until the expiration of that time.

Order of justice

13. (1) If a justice is satisfied, on evidence under oath by a by-law officer, that there are reasonable grounds for believing that it is appropriate for the administration of the Agricultural Nutrient Management Law or the regulations or necessary to protect human health or safety or to protect property, the justice may issue an order prohibiting entry into all or part of any land or place or prohibiting the use of, interference with, disruption of, or destruction of any thing.

Duration of prohibition

(2) The prohibition under the justice's order shall, subject to subsection (3), be for the period of time set out in the order.

Expiry

(3) Unless renewed, an order made under this section expires on the earlier of the day specified for the purpose in the order or the day that is 30 days after the date on which the order is made.

Renewal

(4) An order made under this section may be renewed for any reason set out in subsection (1), before or after expiry, for one or more periods, each of which is not more than 30 days.

Application for initial order

(5) An initial order made under subsection (1) may be issued on application without notice.

Application for renewal order

(6) A renewal order made under subsection (4) may be issued on application made with the notice, if any, that is specified for the purpose under subsection (7).

Requirements for renewal

(7) In an order made under subsection (1) or (4), a justice may specify notice requirements that must be met by a person applying for a renewal of the order or for a further renewal of the order, as the case may be.

Notice of order

(8) A by-law officer may give notice of an order made under subsection (1) or (4) in the manner that the officer considers appropriate in the circumstances.

Order ineffective

(9) An order made under subsection (1) or (4) is not effective in any court proceeding against a person if the person satisfies the court that the person neither knew nor should have known of the order.

Securing of place or thing

14. If an order made under section 12 or 13 is in effect, a by-law officer may take measures to secure the land, place or thing to which the order relates by means of locks, gates, fences, security guards or other means that the officer deems necessary to prevent entry into the land or place or to prevent the use of, interference with, disruption of, or destruction of the thing.

Use of force

15. A by-law officer may use the force that is reasonably necessary,

- (a) to carry out a court order issued under this Part; or
- (b) to prevent the destruction of any thing that the officer reasonably believes may afford evidence of an offence under the Agricultural Nutrient Management Law.

Samples and copies

16. A by-law officer may detain samples and copies obtained under section 17, 18 or 20 for any period and for any of the purposes of the Agricultural Nutrient Management Law and the regulations.

Seizure during inspection

17. (1) During an inspection under section 7, 8 or 10, a by-law officer may, without a warrant or court order, seize any thing that is produced to the officer or that is in plain view, if,

- (a) the officer reasonably believes that the thing will afford evidence of an offence under the Agricultural Nutrient Management Law; or
- (b) the officer reasonably believes that the thing was used or is being used in connection with the commission of an offence under the Agricultural Nutrient Management Law and that the seizure is necessary to prevent the continuation or repetition of the offence.

Report to justice

(2) A by-law officer who seizes any thing during an inspection under section 7, 8 or 10 shall bring the thing seized before a justice or, if that is not reasonably possible, shall report the seizure to a justice.

Application of Provincial Offences Act

(3) Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications in respect of a thing seized by a by-law officer during an inspection under section 7, 8 or 10.

Disposition of certain things

18. (1) If the Director believes that, given the nature of a thing seized during an inspection under section 7, 8 or 10, the thing may pose a risk to human health or safety or to property, the Director may direct the person having custody of the thing, to dispose of the thing in a manner satisfactory to the Director.

Perishables

(2) If the person having custody of any thing seized during an inspection under section 7, 8 or 10 believes that the thing will rot, spoil or otherwise perish, the person may dispose of the thing.

Non-application of provisions

(3) Subsections 17(2) and (3) do not apply to a thing disposed of in accordance with this section.

Forfeiture

(4) A thing disposed of in accordance with this section is forfeited to the Band.

Notice of disposal

(5) If a thing has been disposed of in accordance with subsections (1) to (4), the Director shall ensure that a by-law officer gives written notice of the seizure and disposal, within 15 days of the disposal,

- (a) to every person whom the officer knows or has reason to believe is an owner of the thing seized; and
- (b) to every person who has a security interest in the thing that is perfected by registration under the *Personal Property Security Act* against the name of any person whom the officer knows or has reason to believe is the owner.

Contents of notice

(6) The notice shall include,

- (a) a description of the thing seized sufficient to enable it to be identified;
- (b) the location at which the thing was seized;
- (c) the date of the seizure and disposal;
- (d) the name and telephone number of the by-law officer who seized the thing or of the officer's delegate;
- (e) a statement of the reason for the seizure and disposal;
- (f) a reference to the statutory provision authorizing the seizure and disposal; and
- (g) a reference to the statutory provision permitting the person to apply to the Superior Court of Justice for relief against the forfeiture.

Order for tracking

19. (1) In this section,

“device” means a substance or tracking device that, when placed or installed in or on any place, land or thing, may be used to help ascertain, by electronic or other means, the origin, identity or location of any thing.

Issuance of order

(2) On application without notice, a justice may issue an order in writing authorizing a by-law officer, subject to this section, to use any device, investigative technique or procedure or to do anything described in the order if the justice is satisfied by evidence under oath that there are reasonable grounds to believe that,

- (a) an offence against the Agricultural Nutrient Management Law has been or will be committed; and
- (b) information concerning the offence will be obtained through the use of the device, technique or procedure or the doing of the thing.

Limitation

(3) An order under this section shall not authorize the interception of any private communication.

Same

(4) No device, technique or procedure shall be used to intercept any private communication under an order issued under this section.

Conditions of order

(5) An order issued under this section shall contain the conditions that the justice considers advisable in the circumstances.

Activities under order

- (6) An order issued under this section may authorize a by-law officer to,
- (a) place, install, maintain or remove a device in or on any land, place or thing; and
 - (b) monitor, or have monitored, a device or information from a device placed or installed in or on any land, place or thing.

Duration of order

(7) An order issued under this section is valid for a period of 60 days or for whatever shorter period is specified in the order.

Further orders

(8) A justice may issue further orders under subsection (2).

Police assistance

20. (1) Whenever a by-law officer is required or empowered by the Agricultural Nutrient Management Law or the regulations to do or direct the doing of any thing, the officer may,
- (a) take those steps and employ the assistance that is necessary to accomplish what is required; and
 - (b) when obstructed in so doing, call for the assistance of any member of the Ontario Provincial Police or the police service in the area where the assistance is required.

Same

(2) It is the duty of every member of a police service called to render assistance under clause (1) (b) to render the assistance.

Restoration of excavation

21. A by-law officer who makes or causes the making of an excavation in the course of performing duties under the Agricultural Nutrient Management Law shall restore the property, so far as is reasonably possible, to the condition it was in before the excavation was made.

Matters confidential

22. (1) Except as to information in respect of the discharge of materials containing nutrients into the natural environment, every by-law officer shall preserve secrecy in respect of all matters that come to the officer's knowledge in the course of any inspection under the Agricultural Nutrient Management Law or the regulations and shall not communicate the matters to any person except,

- (a) as may be required in connection with the administration of,
 - (i) the Agricultural Nutrient Management Law or a prescribed Law, or
 - (ii) the regulations made under the Agricultural Nutrient Management Law or a prescribed Law, or
 - (iii) any proceeding under a Law mentioned in subclause (i) or the regulations made under that Law;
- (b) to the officer's counsel; or
- (c) with the consent of the person to whom the information relates.

Testimony in civil suit

(2) Except in a proceeding described in subclause (1) (a) (iii), no by-law officer shall be required to give testimony, other than testimony in respect of the discharge of materials containing nutrients into the natural environment, in any civil suit or proceeding with regard to information obtained by the officer in the course of the administration of the Agricultural Nutrient Management Law or the regulations.

Power to require response to inquiries

22.1. (1) For the purposes of determining compliance of a person with the Agricultural Nutrient Management Law or the regulations, a by-law officer may, at any reasonable time and with any reasonable assistance, require the person, or any person employed by or providing services to the person, to respond to reasonable inquiries.

Same

(2) For the purposes of subsection (1), a by-law officer may make inquiries by telephone or by any other means of communication.

Production of document

(3) In requiring a person to respond to an inquiry under subsection (1), a by-law officer may require the production of any document or data, in any form, required to be kept under the Agricultural Nutrient Management Law and of any other document or data, in any form, related to the purpose of the inquiry.

Records in electronic form

(4) If a record is retained in electronic form, a by-law officer may require that a copy of it be provided to him or her on paper or electronically, or both.

Orders

Order for preventive measures

23. (1) A by-law officer or Director may issue an order to any of the following persons if the officer or Director, as the case may be, has reasonable grounds to believe that an adverse effect described in subsection 12 (3) will result or is likely to result if materials containing nutrients are discharged into the natural environment, other than the air, from anything undertaken on, in or from lands, premises, vehicles or vessels:

1. A person who owns or who has management or control of lands or premises that the by-law officer may enter under section 7 or 10.
2. A person who operates a vehicle or vessel that the by-law officer may signal to stop or that is required to report under section 8.

Information in order

(2) The order shall,

- (a) briefly describe the reasons for the order and the circumstances on which the reasons are based; and
- (b) specify that the person to whom the order is directed has the right to request,
 - (i) a review of the order by a Director in accordance with section 26, if the order is made by the by-law officer, or

Contents of order

(3) The order may require the person to whom it is directed to,

- (a) take, within the time specified, whatever steps are specified in it to prevent, decrease or eliminate an adverse effect described in subsection 12 (3) that will result or is likely to result from the discharge of materials containing nutrients into the natural environment, other than the air, from anything undertaken on, in or from lands, premises, vehicles or vessels; and
- (b) report on the steps mentioned in clause (a), within the time specified, to the by-law officer or Director who issued the order.

Compliance

(4) A person who is served with an order made under subsection (1) shall comply with the order within the period of time specified in the order.

Compliance order

24. (1) A by-law officer or Director who has reasonable grounds to believe that a person has contravened a provision of the Agricultural Nutrient Management Law or the regulations or a condition of a certificate, licence or approval may make an order directing the person to comply with the Law, regulations, certificate, licence or approval, as the case may be, immediately or within the time specified in the order.

Contents of order

(2) The order shall,

- (a) specify the provisions of the Agricultural Nutrient Management Law or the regulations or the conditions of a certificate, licence or approval that the by-law officer believes the person to have contravened;
- (b) briefly describe the nature and, where applicable, the location of the contravention;
- (c) describe the action that is required to correct the contravention and the time within which the person is required to ensure that the action is taken; and
- (d) specify that the person has the right to request,
 - (i) a review of the order by a Director in accordance with section 26, if the order is made by the by-law officer.

Service

(3) The by-law officer or Director who makes the order shall have it served on the person.

Compliance

(4) A person who is served with an order made under subsection (1) shall comply with the order within the period of time specified in the order.

Amendment or revocation of order

25. (1) If a by-law officer makes an order under subsection 23 (1) or 24 (1), the officer or a Director may, by order, amend or revoke it.

Notice

(2) Upon amending or revoking an order under subsection (1), the by-law officer or Director shall give written notice of the amendment or revocation to the person to whom the order is directed.

Review of order

26. (1) A person to whom an order made by a by-law officer under subsection 23 (1) or 24 (1) is directed may, within seven days after being served with a copy of the order, request that a Director review the order.

Form of request

(2) The request may be made orally, with written confirmation served on the Director within the time specified in subsection (1), or in writing.

Contents of request

(3) A written request for review under subsection (1) or a written confirmation of an oral request under subsection (2) shall include,

- (a) the portions of the order in respect of which the person is requesting the review;
- (b) any submissions that the person wishes the Director to consider; and
- (c) for the purpose of subsection (7), an address for service by mail or by electronic facsimile transmission or by whatever other means of service that the regulations specify.

No automatic stay

(4) The request for review does not stay the order, unless the Director orders otherwise in writing.

Decision of Director

(5) A Director who receives a request for review may,

- (a) revoke the order of the by-law officer; or
- (b) by order directed to the person requesting the review, confirm or alter the order of the by-law officer.

Same

(6) For the purposes of subsection (5), the Director may substitute the Director's own opinion for that of the by-law officer.

Notice of decision

(7) The Director shall serve the person requesting the review with a copy of,

- (a) the decision, if the Director decides to revoke the order of the by-law officer; or
- (b) the Director's order and reasons for it, if the Director confirms or alters the order of the by-law officer.

Deemed confirmation of order

(8) If, within seven days of receiving a written request for review or a written confirmation of an oral request for review in accordance with subsection (1) or (2), the Director does not make a decision under subsection (5) and give oral or written notice of the decision to the person requesting the review, the Director shall be deemed to have made an order confirming the order of the by-law officer.

Notice

(9) For the purpose of an appeal to the Tribunal, a confirming order that subsection (8) deems the Director to have made, shall be deemed,

- (a) to be directed to each person to whom the order of the by-law officer was directed; and
- (b) to have been served, on each person to whom the order of the by-law officer was directed, at the expiry of the time period mentioned in subsection (8).

The [First Nation name] First Nation Law No. XX
Agricultural Nutrient Application Waiting Periods

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have an **Agricultural Nutrient Application Waiting Periods**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following Regulation;

PART I – DEFINITIONS AND INTERPRETATION

Definitions and General

Short Title

1. This regulation may be cited as the “*Nutrient Application Waiting Periods*”.

Definitions and general

2. (1) In this Regulation,

“**agricultural operation**” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“**agricultural source materials**” or “**ASM**” means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

1. Manure produced by farm animals, including associated bedding materials.
2. Runoff from farm-animal yards and manure storages.
3. Washwaters from agricultural operations that have not been mixed with human body waste.
4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.
5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario Nutrient Management Act;

“**application**”, in relation to the application of a material to land, does not include the direct deposit onto land of feces or urine by animals;

“**Category 1 non-agricultural source materials**” or “**Category 1 NASM**” means non-agricultural source materials described in Table 1 of Schedule 1;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 1;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 1;

“CM1”, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 2;

“CM2”, when used in reference to NASM, means that its content of a regulated metal exceeds that of CM1 NASM but does not exceed the concentration set out in Column 2 or 3 of Table 2 of Schedule 2;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled *“Ontario Compost Quality Standards”*, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“CP1”, when used in reference to NASM, means that its content of a pathogen named in Column 1 of Table 1 or Table 2 of Schedule 3 does not exceed the level set out in Column 2 or 3 of Table 1 or Column 2 or 3 of Table 2;

“CP2”, when used in reference to NASM, means that,

- (a) its content of *E. coli* exceeds that of CP1 NASM but does not exceed the level set out in Column 2 or 3 of Table 3 of Schedule 3, or
- (b) its content of a pathogen other than *E. coli* named in Column 1 of Table 1 or Table 2 of Schedule 3 exceeds that of CP1 NASM, but its content of *E. coli* does not exceed that of CP2 NASM;

“farm unit” means land consisting of, or designated as, a farm unit under section 6 of the **Nutrient Application Strategies, Plans, and Approvals Regulation**;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.
3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.

4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“operation” means an agricultural operation or a non-agricultural operation;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation;

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law.

Surface water

2.1. (1) In this Regulation,

“surface water” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 - (a) is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and
 - (b) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

1. Grassed waterways.
2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
3. Rock chutes and spillways.
4. Roadside ditches that do not contain a continuous or intermittent stream.
5. Temporarily ponded areas that are normally farmed.
6. Dugout ponds.
7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Nutrients

3. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application of Regulation

4. This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

4.1 (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

5. For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by implication by the Regulations or by an order made under section 23 or 24 of the Agricultural Nutrient Inspection and Orders Regulation.

Waiting Periods

Pre-harvest waiting period

6. (1) No person shall harvest plant material set out in Column 1 of the Table to this section from a field to which NASM that is CM1 and CP1 has been applied unless the waiting period set out in Column 2 opposite the plant material has expired.

(2) No person shall harvest plant material set out in Column 1 of the Table to this section from a field to which NASM other than NASM that is CM1 and CP1 has been applied unless the waiting period set out in Column 3 opposite the plant material has expired.

Table 1: PRE-GRAZING WAITING PERIOD

Item	Column 1	Column 2	Column 3
	Grazing farm animal		

		Waiting period before grazing, after application of NASM that is CM1 and CP1	Waiting period before grazing, after application of NASM other than NASM that is CM1 and CP1
1.	Horses, beef or dairy cattle	3 weeks	2 months
2.	Swine, sheep or goats	3 weeks	6 months

Pre-grazing waiting period

7. (1) No person shall cause or permit a farm animal of a type named in Column 1 of the Table to this section to graze in a field to which NASM that is CM1 and CP1 has been applied unless the waiting period set out in Column 2 opposite the type has expired.

(2) No person shall cause or permit a farm animal of a type set out in Column 1 of the Table to this section to graze in a field to which NASM other than NASM that is CM1 and CP1 has been applied unless the waiting period set out in Column 3 opposite the type has expired.

Table 2: PRE-HARVEST WAITING PERIOD

Item	Column 1 Plant material harvested	Column 2 Waiting period before harvest, after application of NASM that is CM1 and CP1	Column 3 Waiting period before harvest, after application of NASM other than NASM that is CM1 and CP1
1.	Commercial sod	3 weeks	12 months
2.	Hay and haylage	3 weeks	3 weeks
3.	Tree fruits and grapes	3 weeks	3 months
4.	Small fruits	3 weeks	15 months
5.	Vegetables	3 weeks	12 months
6.	Tobacco	3 weeks	12 months

SCHEDULE 2

CATEGORIES OF NON-AGRICULTURAL SOURCE MATERIALS

Table 1: CATEGORY 1 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Culled fruit and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	No additional analysis required.
2.	Peels and pomace produced from fruits and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	
3.	Leaf and yard waste that has not been composted.	
4.	Organic waste matter derived from the drying, cleaning and processing of field and nut crops.	
5.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada), excluding any materials that contain an animal product.	
6.	Aquatic plants.	
7.	Organic waste matter derived from the production of ethanol (plant based mash).	
8.	Any mixture of materials listed in Items 1 to 7.	
9.	Anything listed in Items 1 to 8 that is mixed with agricultural source materials, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	

Table 2: CATEGORY 2 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Leaf and yard waste that has been composted, but does not meet the requirements for Category AA or A compost in Part II of the Compost Standards.	Only if required under section 98.0.16 .
2.	Organic waste matter that contains no meat or fish and is derived from food processing at, <ul style="list-style-type: none"> (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery. 	Only if required under section 98.0.16 .
3.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area of, <ul style="list-style-type: none"> (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or 	Only if required under section 98.0.16 .

	(e) a brewery or distillery.	
4.	Culled cole crops and onions, and peels and pomace from cole crops and onions, but only if the cole crops and onions have been processed without any use of chemicals, other than food-grade chemicals used only to clean the food, the processing equipment and the surrounding area.	Only if required under section 98.0.16 .
5.	Fruit and vegetables, and peels and pomace from fruit and vegetables, that have been processed with the use of chemicals other than as described in Item 4.	Sodium; other parameters only if required under section 98.0.16 .
6.	Fruit and vegetable processing water that contains no chemicals other than food-grade chemicals.	Sodium; other parameters only if required under section 98.0.16 .
7.	Any mixture of materials listed in Items 1 to 6.	As required under section 98.0.16 .
8.	Anything listed in Items 1 to 7 that is mixed with agricultural source materials, Category 1 NASM, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	As required under section 98.0.16 .

Table 3: CATEGORY 3 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a facility for processing, (a) meat, (b) eggs, or (c) dairy products.	Fats, oils and grease (FOG) and sodium; other parameters only if required under section 98.0.16 .
2.	Paunch manure.	Only if required under section 98.0.16 .
3.	Organic waste matter derived from the production of biodiesel.	Only if required under section 98.0.16 .
4.	Organic waste matter from grease traps and interceptors.	FOG and sodium; other parameters only if required under section 98.0.16 .
5.	Organic waste matter produced in a dissolved air flotation process used for the treatment of wastewater from food or feed processing or preparation facilities.	FOG and sodium; other parameters only if required under section 98.0.16 .
6.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada) that may contain an animal product.	Only if required under section 98.0.16 .
7.	Organic waste matter from the processing of fish.	FOG; other parameters only if required under section 98.0.16 .
8.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a fish processing facility.	Only if required under section 98.0.16 .
9.	Cooked pet food manufacturing waste.	FOG; other parameters only if required under section 98.0.16 .
10.	Pulp and paper biosolids.	Boron; other parameters only if required under section 98.0.16 .
11.	Sewage biosolids or any other material, other than untreated septage, that contains human body waste or results from the processing of materials that include sewage biosolids or human body waste.	Only if required under section 98.0.16 .
11.1	Compost that meets the requirements for Category B compost in Part II of the Compost Standards, other than leaf and yard waste described in Item 1 of Table 2.	Sodium; other parameters only if required under section 98.0.16 .
12.	Any NASM that is not listed in Table 1 or 2.	As required under section 98.0.16 .
13.	Any mixture of materials listed in Items 1 to 12.	As required under section 98.0.16 .

14.	Anything listed in Items 1 to 13 that is mixed with agricultural source materials, Category 1 or Category 2 NASM, commercial fertilizer, compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards, or any other nutrient.	As required under section 98.0.16 .
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SCHEDULE 3 REGULATED METAL CONTENT OF NASM

Table 1: CM1 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	0.13	13
2.	Cadmium	0.03	3
3.	Cobalt	0.34	34
4.	Chromium	2.1	210
5.	Copper	1.0	100
6.	Lead	1.5	150
7.	Mercury	0.008	0.8
8.	Molybdenum	0.05	5
9.	Nickel	0.62	62
10.	Selenium	0.02	2
11.	Zinc	5.0	500

Table 2: CM2 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	1.7	170
2.	Cadmium	0.34	34
3.	Cobalt	3.4	340
4.	Chromium	28.0	2,800
5.	Copper	17.0	1,700
6.	Lead	11.0	1,100
7.	Mercury	0.11	11
8.	Molybdenum	0.94	94
9.	Nickel	4.2	420
10.	Selenium	0.34	34
11.	Zinc	42.0	4,200

SCHEDULE 4 PATHOGEN CONTENT OF NASM

Table 1: CP1 NASM that is not sewage biosolids and does not contain human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1 % total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Giardia	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Cryptosporidium	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 2: CP1 NASM that is sewage biosolids or contains human body waste

Item	Column 1 Pathogen	Column 2 Level in aqueous material (containing less than 1% total solids, wet weight)	Column 3 Level in non-aqueous material (containing 1% or more total solids, wet weight)
1.	E. coli	1,000 CFU per 100 ml	1,000 CFU per gram of total solids, dry weight
2.	Salmonella	3 CFU or MPN per 100 ml	3 CFU or MPN per 4 grams of total solids, dry weight
3.	Viable Helminth ova	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight
4.	Total culturable enteric virus	No detectable level in 100 ml	No detectable level in 4 grams of total solids, dry weight

Table 3: CP2 NASM

Item	Column 1 Pathogen	Column 2 Geometric mean of samples of aqueous material (containing less than 1% total solids, wet weight) taken during the 4 months before transfer date	Column 3 Geometric mean of samples of non-aqueous material (containing 1% or more total solids, wet weight) taken during the 4 months before transfer date
1.	E. coli	2 million CFU per 100 ml	2 million CFU per gram of total solids, dry weight

The [First Nation name] First Nation Law No. XX
Nutrient Application Strategies, Plans, and Approvals Regulation

A regulation for the protection of Source Waters.

Whereas, we, the [First Nation name] First Nation, as part of the Anishinaabeg Nation, have maintained a self-sufficient government with a sustainable economy, distinctive language, powerful spirituality, and a rich culture within a defined territory that pre-dates the establishment of Canada;

Whereas, we have never surrendered our sovereignty and have the inherent right to govern ourselves and to enter into agreements with other Nations;

Whereas, the [First Nation name] First Nation is part of the Three Fires Confederacy, Ojibway (Keepers of the Faith), Pottawatomie (Keepers of the Fire), Odawa (Keepers of the Trade);

Whereas, we have the inherent right to our land, our water, our culture, our language, and traditions for our past, present, and future generations for the benefit of The [First Nation name] First Nation;

Whereas, our identity grows from our connection to the land and the water along with our respect for our culture, language, and traditions. We commit to the conservation of our resources so our future generations can share the same connections;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is empowered to make such laws pursuant to Article 3 of the Constitution of the [First Nation name] First Nation;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have a **Nutrient Application Strategies, Plans, and Approvals Regulation**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following Regulation;

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PART I – DEFINITIONS AND INTERPRETATION

Definitions and General

Short Title

1. This regulation may be cited as the “*Nutrient Application Strategies, Plans, and Approvals Regulation*”.

Definitions and general

2. (1) In this Regulation,

“**adverse effect**” is an effect that is one or more of the following:

- (a) Impairment of the quality of the natural environment for any use that can be made of it.
- (b) Injury or damage to property or to plant or animal life.
- (c) Harm or material discomfort to any person.
- (d) An adverse effect on the health of any person.
- (e) Impairment of the safety of any person.
- (f) Rendering any property or plant or animal life unfit for human use.
- (g) Interference with the normal conduct of business.

“**agricultural operation**” means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- (a) draining, irrigating or cultivating land,
- (b) growing, producing or raising farm animals,
- (c) the production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- (d) the production of eggs, cream and milk,
- (e) the operation of agricultural machinery and equipment,
- (f) ground and aerial spraying,
- (g) the management of materials containing nutrients for farm purposes,
- (h) the processing by a farmer of the products produced primarily from the farmer’s agricultural operation,
- (i) activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- (j) any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

“**agricultural source materials**” or “**ASM**” means any of the following treated or untreated materials, other than compost that meets the requirements for Category AA, A or B compost in Part II of the Compost Standards or a commercial fertilizer, if they are capable of being applied to land as nutrients:

1. Manure produced by farm animals, including associated bedding materials.
2. Runoff from farm-animal yards and manure storages.
3. Washwaters from agricultural operations that have not been mixed with human body waste.

4. Organic materials produced by intermediate operations that process materials described in paragraph 1, 2 or 3.
5. Regulated compost as defined in subsection 1 (1) of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the Ontario Nutrient Management Act;

“application”, in relation to the application of a material to land, does not include the direct deposit onto land of feces or urine by animals;

“Category 1 non-agricultural source materials” or **“Category 1 NASM”** means non-agricultural source materials described in Table 1 of Schedule 1;

“Category 2 non-agricultural source materials” or **“Category 2 NASM”** means non-agricultural source materials described in Table 2 of Schedule 1;

“Category 3 non-agricultural source materials” or **“Category 3 NASM”** means non-agricultural source materials described in Table 3 of Schedule 1;

“CM1”, when used in reference to NASM, means that its content of a regulated metal does not exceed the concentration set out in Column 2 or 3 of Table 1 of Schedule 2;

“CM2”, when used in reference to NASM, means that its content of a regulated metal exceeds that of CM1 NASM but does not exceed the concentration set out in Column 2 or 3 of Table 2 of Schedule 2;

“commercial fertilizer” means a fertilizer or supplement, as both of those terms are defined in the *Fertilizers Act* (Canada);

“Compost Standards” means the document published by the Ministry of the Environment entitled “Ontario Compost Quality Standards”, as amended from time to time, originally dated July 25, 2012 and available through the Ministry’s website on the Internet and through the Ministry’s Public Information Centre;

“contingency plan” means a proposal in a nutrient management strategy or plan for dealing with,

- (a) an excess of prescribed materials or nutrients, if the amount of prescribed materials or nutrients generated or received at a farm unit is greater than that otherwise provided for by the strategy or plan,
- (b) an excess of prescribed materials or nutrients, if the amount of prescribed materials or nutrients requiring storage prior to use exceeds or is anticipated to exceed the storage capacity available for prescribed materials or nutrients otherwise provided for by the strategy or plan,
- (c) unanticipated releases of prescribed materials or nutrients from storage or during transport or application,
- (d) inability to store, apply or otherwise use prescribed materials or nutrients as otherwise provided for by the strategy or plan, as a result of weather conditions or unavailability of equipment, or
- (e) any other contingency requiring the handling or storage of prescribed materials or nutrients in an emergency;

“control”, as a verb in relation to land, an agricultural operation or a non-agricultural operation, includes manage and operate;

“dugout pond” means a pond,

- (a) that is constructed entirely within a farm unit,

- (b) that is not connected to surface water,
- (c) that is located more than 100 metres from the nearest surface water or well, and
- (d) to which access by livestock is entirely restricted or is limited so that livestock are only allowed to drink from the pond;

“earth” means inorganic components of the earth’s crust such as clay, silt, sand, gravel or any mixture of those components and may contain small amounts of organic materials;

“farm unit” means land consisting of, or designated as, a farm unit under section 6;

“nutrient” means any material, including fertilizer, manure, compost, sewage biosolids and pulp and paper biosolids, that can be applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use, but does not include any material that the regulations specify does not come within the definition of “nutrient”;

“nutrient unit” means the amount of nutrients that give the fertilizer replacement value of the lower of 43 kilograms of nitrogen or 55 kilograms of phosphate as nutrient as established by reference to the Nutrient Management Protocol;

“non-agricultural source materials” or **“NASM”** means any of the following materials, other than compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards or a commercial fertilizer, if the materials are intended to be applied to land as nutrients:

1. Pulp and paper biosolids.
2. Sewage biosolids.
3. Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
4. Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient;

“Nutrient Management Protocol” means,

- (a) the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of this Regulation and dated July 25, 2012, and
- (b) Table 1 (Nutrient Unit Livestock Information Table) and Table 2 (Manure Databank) of the Nutrient Management Tables;

“Nutrient Management Tables” means the document of that name, as amended from time to time, prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the NASM Odour Guide and the Nutrient Management Protocol;

“OC1”, when used in reference to NASM, means that it has an odour detection threshold of less than 500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO1”)

“OC2”, when used in reference to NASM, means that it has an odour detection threshold of 500 or more but less than 1500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO2”)

“OC3”, when used in reference to NASM, means that it has an odour detection threshold of 1500 or more but less than 4500 odour units per cubic metre as determined in accordance with the NASM Odour Guide; (“CO3”);

“operation” means an agricultural operation or a non-agricultural operation;

“owner” means any person who has possession of land or a building on the [First Nation name] First Nation including leased land;

“person” includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation;

“Sampling and Analysis Protocol” means the document of that name prepared by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment for the purposes of the *General*, O Reg 267/03 regulation under the *Nutrient Management Act, 2002*, SO 2002, c 4 and dated July 25, 2012;

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law;

“well” includes a gas well, oil well, unused well, test well and water well.

Surface water

2.1. (1) In this Regulation,

“surface water” means, subject to subsection (2),

- (a) a natural or artificial channel that carries water continuously throughout the year, or intermittently, and does not have established vegetation within the bed of the channel except vegetation dominated by plant communities that require or prefer the continuous presence of water or continuously saturated soil for their survival,
- (b) a lake, reservoir, pond or sinkhole, or
- (c) a wetland, such as a swamp, marsh, bog or fen, but not land that is being used for agricultural purposes that no longer exhibits wetland characteristics, if the wetland,
 - (a) is seasonally or permanently covered by shallow water or has the water close to the surface of the ground, and
 - (b) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants.

(2) The following are not surface water for the purposes of this Regulation:

1. Grassed waterways.
2. Temporary channels for surface drainage, such as furrows or shallow channels that can be tilled and driven through.
3. Rock chutes and spillways.
4. Roadside ditches that do not contain a continuous or intermittent stream.
5. Temporarily ponded areas that are normally farmed.
6. Dugout ponds.
7. Artificial bodies of water intended for the storage, treatment or recirculation of runoff from farm-animal yards, manure storage facilities and sites and outdoor confinement areas.

Nutrients

3. The application to land of agricultural source materials or non-agricultural source materials is a prescribed use for the purpose of the definition of “nutrient”.

Application of Regulation

Application of Regulation

4. This Regulation applies to the Traditional Territory lands, subsurface minerals and areas, lakes, rivers, streams, surface water, groundwater, and the air above the Traditional Territory, that form part of the Traditional Territory and any foreshore areas over which the [First Nation name] First Nation has jurisdiction or delegated authority.

4.1 (1) This Regulation does not apply to a farm unit if the number of farm animals on the farm unit is not sufficient to generate more than five nutrient units of manure annually.

(2) For the purposes of subsection (1), the number of farm animals may be counted on a single day.

(3) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a farm unit to which subsection 8 (2) applies, whatever the number of nutrient units that are generated by the farm unit.

(4) Despite subsection (1), this Regulation applies to an agricultural operation carried out on a NASM plan area in any calendar year in which NASM is applied to a NASM application area that is part of the NASM plan area or stored in an associated NASM storage facility, whatever the number of nutrient units that are generated by the relevant farm unit.

Farm Animal Numbers

No restriction on farm animal numbers

5. For the purposes of the Law and its Regulations, there shall be no restriction on the numbers of farm animals that may be managed in the course of an agricultural operation, unless imposed expressly or by implication by the Regulations or by an order made under section 23 or 24 of the Agricultural Nutrient Inspection and Orders Regulation.

Farm Units, NASM Plan Areas, NASM Application Areas and NASM Storage Facilities

What constitutes a farm unit

6. (1) An area of land used for an agricultural operation, part of an agricultural operation or more than one agricultural operation constitutes a single farm unit for the purposes of this Regulation only if the following rules apply:

1. It must be reasonably necessary, for the avoidance of any adverse effect, for any prescribed materials generated on the land, or any nutrients applied on the land, to be managed by reference to a single nutrient management strategy or plan.
2. If prescribed materials are generated in the course of an agricultural operation carried out on the land, the land of the farm unit must include all land that the current owner of the land on which the materials are generated acquired under a single transfer and on which the materials are managed.
3. Despite paragraph 2, the land of the farm unit does not include land to which prescribed materials generated in the course of an agricultural operation are transferred if the nutrient management strategy or plan for the operation provides for the materials to be transferred and if the transfer is done in accordance with this Regulation,
 - (a) under a broker agreement,
 - (b) under a nutrient transfer agreement,
 - (c) to another agricultural operation for application to land, or
 - (d) for use other than as a nutrient.
4. A part of a farm unit on which agricultural source material is generated may be located at any distance from a part of the farm unit where the material is applied to land.

(2) If a person owns or controls land in relation to which a nutrient management strategy or plan has been or is being prepared, the Council may, on application by the person or on the Council's own initiative, by certificate given to the person, designate land described in the certificate as a farm unit for the purposes of the strategy or plan, regardless of whether the person owns or controls all or part of the designated land.

(3) A Director shall have regard to the rules described in subsection (1) in making a decision to designate land as a farm unit.

NASM plan areas

6.1 The following rules apply to NASM plan areas:

1. The person who owns or controls an agricultural operation to which section 11.2 applies has discretion, subject to paragraphs 2 to 5, to define NASM plan areas.
2. A separate NASM plan is required for each NASM plan area.
3. More than one NASM plan area may be included within the same farm unit.
4. All of a NASM plan area must be included within one farm unit.
5. No NASM application area shall be included within more than one NASM plan area. NASM application areas

6.2 The following rules apply to NASM application areas:

1. A NASM application area has no minimum size.
2. More than one NASM application area may be included within the same NASM plan area.
3. All of a NASM application area must be included within one NASM plan area.
4. No land can be included within more than one NASM application area.

NASM storage facilities

6.3 The following rules apply to NASM storage facilities:

1. A NASM storage facility is not required to be contiguous to the NASM application area with which it is associated.
2. A NASM storage facility may be associated with more than one NASM application area, including application areas that are part of different NASM plan areas within the same farm unit.
3. A NASM plan area,
 - i. may include one or more NASM storage facilities, and
 - ii. is not required to include any NASM storage facility.

PART II – NUTRIENT MANAGEMENT STRATEGIES, PLANS AND NASM PLANS: GENERAL

Nutrient Management Strategies

Application of strategies

7. (1) A nutrient management strategy applies to an agricultural operation carried out on a farm unit.
- (2) A separate nutrient management strategy is required for each farm unit on which an agricultural operation to which a nutrient management strategy applies is carried out.

Compliance with strategy

- 7.1. (1) A person who owns or controls an agricultural operation to which this section applies shall ensure that prescribed materials generated on a farm unit in the course of the operation are managed in accordance with a nutrient management strategy that is in force with respect to the operation and the farm unit.
- (2) No person shall manage prescribed materials that are generated on a farm unit in the course of an agricultural operation to which this section applies except in accordance with a nutrient management strategy that is in force with respect to the operation and the farm unit.
- (3) This section does not apply to an agricultural fair at which farm animals are present for 25 days or less if all of the manure generated at the fair is disposed of under a broker agreement.

Phasing-in, agricultural operations

8. (1) Section 7.1 applies to an agricultural operation that generates agricultural source materials if the number of farm animals on a farm unit on which the operation is carried out is sufficient to generate 300 or more nutrient units annually.
- (2) Section 7.1 applies to an agricultural operation that generates agricultural source materials if a person who owns or controls the land on which the operation is carried out,
- (a) constructs or causes to be constructed any building or structure that is used to house farm animals or to store manure and that is located or to be located on the land, if a building permit in respect of the building or structure would be required under the *Building Code Act, 1992*; or

(b) constructs or causes to be constructed a permanent nutrient storage facility made of earth on the land.

(2) Section 7.1 applies to an agricultural operation carried out on a farm unit that receives off-farm anaerobic digestion materials for treatment through mixed anaerobic digestion in a regulated mixed anaerobic digestion facility.

Construction of buildings or structures

8.1. (1) If this Regulation requires a person who owns or controls an agricultural operation to have a nutrient management strategy for carrying out the operation, no person shall construct a building or structure on a farm unit on which the operation is carried out, where the building or structure is used to house farm animals or store nutrients, unless,

(a) the nutrient management strategy applicable to the operation carried out on the farm unit contemplates the construction of the building or structure; and

(b) the nutrient management strategy has been approved in accordance with this Regulation.

(2) No person shall construct a regulated mixed anaerobic digestion facility on a farm unit on which an agricultural operation is carried out unless the nutrient management strategy applicable to the operation carried out on the farm unit contemplates the construction of the facility and has been approved in accordance with this Regulation.

Nutrient Management Plans

Application of plans

9. (1) A nutrient management plan applies to an agricultural operation carried out on a farm unit.

(2) A separate nutrient management plan is required for each farm unit on which an agricultural operation to which a nutrient management plan applies is carried out.

Compliance with plan

10. (1) A person who owns or controls an agricultural operation to which this section applies shall ensure that any nutrients that are applied to the land of a farm unit in the course of the operation are managed in accordance with a nutrient management plan that is in force with respect to the operation and the farm unit.

(2) No person shall manage nutrients that are stored on or applied to the land of a farm unit in the course of an agricultural operation to which this section applies except in accordance with a nutrient management plan that is in force with respect to the operation and the farm unit.

Phasing-in

11. (1) Subject to subsection (2), section 10 applies to an agricultural operation that is carried out on a farm unit as soon as the person who owns or controls it is required to have a nutrient management strategy for carrying out the operation on the farm unit.

(2) Subject to subsection (3), if on the day subsection (1) requires the person who owns or controls an agricultural operation in the course of which nutrients are applied to the land of a farm unit to ensure that the nutrients are managed in accordance with a nutrient management plan, the number of farm

animals on the farm unit is not sufficient to generate 300 or more nutrient units annually, section 10 does not apply to the operation until the day on which the number of farm animals on the farm unit is increased to a level that is sufficient to generate 300 or more nutrient units annually.

(3) Subsection (2) does not apply to an agricultural operation that generates agricultural source materials if any portion of the land of the farm unit used for the operation lies within 100 metres of a municipal well.

NASM Plans

Application of NASM plans

11.1 (1) A NASM plan applies to an agricultural operation carried out on a NASM plan area if Category 2 or Category 3 NASM is,

- (a) applied to a NASM application area that is part of the NASM plan area; or
- (b) stored in an associated NASM storage facility.

(2) A separate NASM plan is required for each NASM plan area within which Category 2 or Category 3 NASM is applied to land or stored.

Compliance with NASM plan

11.2 (1) A person who owns or controls an agricultural operation to which this section applies shall ensure that any Category 2 or Category 3 NASM that is applied to the land of a NASM application area in the course of the operation is managed in accordance with a NASM plan that is in force with respect to the operation and the NASM plan area.

(2) No person shall manage nutrients that are stored on or applied to the land of a NASM plan area in the course of an agricultural operation to which this section applies except in accordance with a NASM plan that is in force with respect to the operation and the NASM plan area.

Phasing-in

11.3 (1) Subject to subsections (2) and (3), section 11.2 applies to an agricultural operation in the course of which Category 2 or Category 3 NASM is stored on or applied to the land of a NASM plan area on and after January 1, 2019.

(2) If, on January 1, 2019, a nutrient management plan that provides for the application of the NASM to the land has been approved under section 21 and the approval has not been suspended or revoked and has not ceased to be in force, section 11.2 does not apply to the agricultural operation until the day on which,

- (a) the nutrient management plan is suspended or revoked or ceases to be in force;
- (b) the person who owns or controls the agricultural operation,
 - (i) applies NASM to a part of the land of the farm unit that is not identified in the plan as land to which NASM will be applied,
 - (ii) applies NASM, other than the specific NASM provided for in the plan, to the land of the farm unit, or
 - (iii) stores NASM on the land of the farm unit in a NASM storage facility that is not identified as such in the plan; or

(c) there is a change of ownership or control of the agricultural operation. O. Reg. 338/09, s. 17.

(3) After December 31 of the last year set out in a NASM plan, section 11.2 does not apply to the agricultural operation carried out on the NASM plan area unless Category 2 or Category 3 NASM is stored on or applied to the land of the NASM plan area on or after January 1 of the next year.

PART III – NUTRIENT MANAGEMENT STRATEGIES, PLANS AND NASM PLANS: PREPARATION

Nutrient Management Strategies

Preparation and contents

12. (1) A nutrient management strategy for an agricultural operation,

- (a) must be prepared by a person qualified to do so;
- (b) must comply with this Regulation, the Nutrient Management Protocol and the Sampling and Analysis Protocol;
- (c) must contain a contingency plan;
- (d) must include a declaration prepared in a form and manner specified by a Director that,
 - (i) identifies the farm unit on which the operation to which the strategy applies is carried out, and
 - (ii) states that the strategy is complete, that it includes an accurate description of the operation and that it has been completed in accordance with this Regulation, the Nutrient Management Protocol and the Sampling and Analysis Protocol; and
- (e) must be signed by,
 - (i) the owner of the operation or an authorized agent of the owner, and
 - (ii) the person who prepared the strategy, who is also referred to in clause (a).

(2) A nutrient management strategy for an agricultural operation must account for the total quantity of prescribed materials that are suitable for application to land as nutrient and that it is reasonable to expect will be generated in the course of the operation, in each year for which the strategy is prepared.

Management of nutrients for non-nutrient purposes

13. A nutrient management strategy may provide for some or all of the prescribed materials that are dealt with by the strategy to be managed for non-nutrient purposes.

Transfer of prescribed materials outside operation

14. (1) If this Regulation requires a person who owns or controls an agricultural operation to have a nutrient management strategy that requires the person to transfer prescribed materials generated in the course of the operation to another operation for which this Regulation requires a nutrient management plan or a NASM plan, the person who owns or controls the operation from which the materials are to be transferred shall enter into an agreement with respect to the transfer with the person who owns or controls the operation to which the materials are to be transferred.

(2) The transfer agreement must identify the person who owns or controls the operation from which the materials are to be transferred, the person who owns or controls the operation to which the materials

are to be transferred, the type and quantity of the materials to be transferred and the proposed date of transfer.

(2.1) If this Regulation requires a person who owns or controls an operation to have a nutrient management strategy for carrying out the operation, the nutrient management strategy may provide for the transfer of prescribed materials to another agricultural operation.

(2.2) If this Regulation requires a person who owns or controls the agricultural operation receiving the prescribed materials mentioned in subsection (2.1) to have a nutrient management plan or a NASM plan for carrying out the operation, the plan or NASM plan must provide for the management of the transferred materials at the operation.

(3) If a nutrient management strategy provides for prescribed materials generated in the course of an agricultural operation to be transferred elsewhere for management in the course of another operation, the location to which the materials are transferred may be anywhere without regard to the distance from the location of the operation, in the course of which the materials are generated.

Cessation of strategies

15. (1) Subject to subsections (2), (3), (4), and (5), a nutrient management strategy ceases to be in force for an agricultural operation on the fifth anniversary of,

- (a) the day on which the strategy was approved under this Regulation; or
- (b) the day on which the strategy was prepared, if approval under this Regulation was not required.

(2) If the person who owns or controls the land on which an agricultural operation is carried out constructs or causes to be constructed any building or structure that is used to house farm animals or to store manure and that is located or to be located on the land, if a building permit in respect of the building or structure would be required under the *Building Code Act, 1992*, the strategy ceases to be in force on the day on which the person constructs the building or structure or causes it to be constructed, except if the strategy contemplates the activity that would be covered by the building permit and the person has submitted the strategy to a Director for approval.

(3) If the person who owns or controls the land on which an agricultural operation is carried out commences the construction of a permanent nutrient storage facility made of earth on the land or causes that construction to commence, the strategy ceases to be in force on the day on which the person takes that action except if the strategy contemplates the construction and the person has submitted the strategy to a Director for approval.

(4) If the person who owns or controls an agricultural operation treats materials through mixed anaerobic digestion in a regulated mixed anaerobic digestion facility, the strategy ceases to be in force on the day on which off-farm anaerobic digestion materials are first received on the farm unit to which the strategy applies unless,

- (a) the strategy contemplates mixed anaerobic digestion in a regulated mixed anaerobic digestion facility; and
- (b) the person who owns or controls the land on which the operation is carried out has submitted the strategy to a Director for approval.

(5) When there is a change of ownership or control of the agricultural operation,

- (a) if the change adversely affects the capacity of a person who owns or controls the operation to implement the strategy, the strategy ceases to be in force on the day on which the change occurs;
- (b) if the change does not adversely affect the capacity of a person who owns or controls the operation to implement the strategy,
 - (i) the strategy does not cease to be in force, and
 - (ii) a person who owns or controls the operation after the change shall file a notice of the change with a Director, within 15 days after the change takes place.

Nutrient Management Plans

Purposes

16. A nutrient management plan must give effect to the following purposes in accordance with the Nutrient Management Protocol:

- 1. The optimization of the relationship between the land-based application of nutrients, farm management techniques and crop requirements.
- 2. Land use which maximizes the efficiency of on-site nutrient use.
- 3. The minimization of adverse environmental impact.

Preparation and contents

17. (1) A nutrient management plan for an agricultural operation,

- (a) must be prepared by a person qualified to do so;
- (b) must comply with this Regulation, the Nutrient Management Protocol and the Sampling and Analysis Protocol;
- (c) must include a contingency plan;
- (d) must include a declaration prepared in a form and manner specified by a Director that,
 - (i) identifies the farm unit on which the operation to which the plan applies is carried out, and
 - (ii) states that the plan is complete, that it includes an accurate description of the operation and that it has been completed in accordance with this Regulation, the Nutrient Management Protocol and the Sampling and Analysis Protocol; and
- (e) must be signed by,
 - (i) the owner of the operation or an authorized agent of the owner, and
 - (ii) the person who prepared the plan, who is also referred to in clause (a).

(2) A nutrient management plan for an agricultural operation must account for the total quantity of nutrients that it is reasonable to expect will be applied to land in the course of the operation during each year for which the plan is prepared.

(3) A nutrient management plan may deal with land in separate parts, including sections of fields.

(4) On application by the person responsible for preparing a nutrient management plan, a Director shall assign an operation identifier to the operation to which the plan applies, unless an operation identifier has already been assigned to the operation.

Cessation of plans

18. (1) Subject to subsection (2), a nutrient management plan ceases to be in force for an agricultural operation carried out on a farm unit on the fifth anniversary of,

- (a) the day on which the plan was approved under this Regulation, if the plan was required to be so approved; or
- (b) the day on which the plan was prepared, if the plan was not required to be approved under this Regulation.

(2) A nutrient management plan that does not provide for receiving non-agricultural source materials in the course of carrying out an agricultural operation on a farm unit ceases to be in force on the day on which non-agricultural source material is received in the course of carrying out the operation.

NASM Plans

Purposes

19.1 A NASM plan must give effect to the following purposes in accordance with the Nutrient Management Protocol:

- 1. The optimization of the relationship between the land-based application of nutrients, farm management techniques and crop requirements.
- 2. The minimization of adverse environmental impact.

Preparation and contents

19.2 (1) A NASM plan for a NASM plan area,

- (a) must be prepared by a person qualified to do so;
- (b) must comply with this Regulation, the Nutrient Management Protocol, the NASM Odour Guide and the Sampling and Analysis Protocol;
- (c) must include a contingency plan;
- (d) must include a declaration prepared in a form and manner specified by a Director that,
 - (i) identifies the farm unit, the NASM plan area, the NASM application area and any associated NASM storage facility,
 - (ii) identifies the NASM that is to be applied, and
 - (iii) states that the plan is complete, that it includes an accurate description of the agricultural operation, and that it has been completed in accordance with this Regulation, the Nutrient Management Protocol, the NASM Odour Guide and the Sampling and Analysis Protocol; and
- (e) must be signed by,
 - (i) the owner of the operation or the owner's authorized agent,
 - (ii) the owner of the land where the NASM plan area is located, or the owner's authorized agent, and
 - (iii) the person who prepared the NASM plan, who is also referred to in clause (a).

(2) A NASM plan must account for the total quantity of nutrients that it is reasonable to expect will be applied to the NASM application area in the course of the agricultural operation during each year for which the plan is prepared.

(3) A NASM plan may deal with land in separate parts, including sections of fields.

(4) A NASM plan may be prepared for one year or more, up to a maximum of five years, and must identify the year or years for which it is prepared.

(5) On application by the person responsible for preparing a NASM plan, a Director shall assign an operation identifier to the agricultural operation to which the plan applies, unless an operation identifier has already been assigned to the operation.

Cessation of NASM plans

19.3 (1) Subject to subsection (2), a NASM plan ceases to be in force for an agricultural operation carried out on a NASM plan area on December 31 of the last year set out in the plan.

(2) If there is a change of ownership or control of the agricultural operation, the plan ceases to be in force on the day the change takes place.

Activities requiring notice or amendment

19.4 (1) If a NASM plan is in force for an agricultural operation carried out on a NASM plan area, no person shall apply NASM to land on the NASM plan area that is not identified as a NASM application area in the plan, unless,

- (a) the plan is amended to identify that land as a NASM application area;
- (b) if the plan requires the approval of a Director, it is submitted to a Director for approval and approved by the Director; and
- (c) if the plan does not require the approval of a Director, the person who owns or controls the agricultural operation files a notice of the amendment with a Director.

(2) If a NASM plan is in force for an agricultural operation carried out on a NASM plan area, no person shall apply NASM other than the specific NASM provided for in the plan to a NASM application area identified in the plan, unless,

- (a) the plan is amended to provide for the application of the other NASM;
- (b) if the plan requires the approval of a Director, it is submitted to a Director for approval and approved by the Director; and
- (c) if the plan does not require the approval of a Director, the person who owns or controls the agricultural operation files a notice of the amendment with a Director.

(3) If a NASM plan is in force for an agricultural operation carried out on a NASM plan area, no person shall store NASM on the NASM plan area in a NASM storage facility that is not identified in the plan, unless,

- (a) the plan is amended to provide for the storage of the NASM in the facility;
- (b) if the plan requires the approval of a Director, it is submitted to a Director for approval and approved by the Director; and
- (c) if the plan does not require the approval of a Director, the person who owns or controls the agricultural operation files a notice of the amendment with a Director.

PART IV - NUTRIENT MANAGEMENT STRATEGIES, PLANS AND NASM PLANS: APPROVAL, REGISTRATION AND NOTICE

Approval

Requirement for approval

20. (1) Subject to subsection (2), a nutrient management strategy for an agricultural operation requires the approval of a Director if,

- (a) a person who owns or controls the land on which the operation is carried out constructs or causes to be constructed any building or structure that is used to house farm animals or to store manure and that is located or to be located on the land, if a building permit in respect of the building or structure would be required under the Building Code Act, 1992;
- (b) a person who owns or controls the land on which the operation is carried out constructs or causes to be constructed on the land a permanent nutrient storage facility that is made of earth and is intended to store manure;
- (c) the person who owns or controls the land on which the operation is carried out treats materials through mixed anaerobic digestion in a regulated mixed anaerobic digestion facility; or
- (d) any portion of the land of the farm unit used for the operation lies within 100 metres of a municipal well.

(2) Subsection (1) does not apply to a new nutrient management strategy for an agricultural operation prepared under subsection 22 (1).

(3) A nutrient management plan does not require the approval of a Director.

(4) A NASM plan requires the approval of a Director if,

- (a) the plan provides for,
 - (i) the application of Category 3 NASM, or Category 2 NASM that is CM2, or
 - (ii) storage of Category 2 or Category 3 NASM in a NASM storage facility; or
- (b) a Director gives a notice in accordance with section 20.1.

Notice requiring NASM plan, etc.

20.1 (1) If a Director has reasonable grounds to believe that the management of NASM in the course of an agricultural operation may cause an adverse effect or is not in accordance with the standards established in this Regulation for OC1, OC2 and OC3 NASM, he or she may give a person who owns or controls the operation written notice requiring the person,

- (a) to prepare a NASM plan, if this Regulation does not already require a NASM plan for the operation, and submit it to the Director for approval under section 21; or
- (b) to submit the operation's NASM plan to the Director for approval under section 21, if this Regulation already requires a NASM plan for the operation but does not require the approval of a Director.

(2) A person who receives a notice under subsection (1) shall not apply NASM to the land of the farm unit until a NASM plan has been prepared and approved.

- (3) A notice under subsection (1) shall contain a statement of the prohibition in subsection (2).
- (4) Before giving a notice under subsection (1), the Director shall give the person a draft of the notice, with reasons, and an opportunity to make written submissions to the Director during the period that ends 15 days after the draft is given.
- (5) When the Director has given a notice under subsection (1),
- (a) section 11.2 applies to the agricultural operation;
 - (b) section 22.8 of the Agricultural Nutrient Application Standards Regulation applies with respect to the application of NASM to the land of the farm unit; and
 - (c) sections 9, 10, 11, 14.0.1 and 14.0.7 of the *Nutrient Sampling, Analysis, and Quality Standards Regulation* apply with respect to any Category 1 or Category 2 NASM that is used in the course of the agricultural operation, as if it were Category 3 NASM described in section 14.0.1 of the *Nutrient Sampling, Analysis, and Quality Standards Regulation*.
- (6) Subsection (5) applies to the agricultural operation until the earliest of the following dates:
- 1. The date on which the person receives a notice from the Director confirming that the concerns that led to the notice under subsection (1) have been satisfactorily addressed.
 - 2. December 31 of a year during which NASM was not applied to or stored on a NASM plan area on the farm unit.
 - 3. January 1 of a given year if, during the preceding year, the person gives the Director written notice that NASM will not be applied to or stored on a NASM plan area on the farm unit during the given year.

Procedure for obtaining approval

21. (1) A person who applies for the approval of a Director for a nutrient management strategy or NASM plan shall submit the strategy or NASM plan to him or her..
- (2) The Director shall, as he or she considers necessary for the purposes of the Act or this Regulation,
- (a) approve the strategy or NASM plan, with or without the conditions described in subsection (4);
 - (b) request the person to provide further relevant information; or
 - (c) refuse to approve the strategy or NASM plan and request the person to revise it and resubmit it in accordance with the directions in the notice mentioned in subsection (3).
- (3) Upon taking an action described in clause (2) (a) or (c), the Director shall deliver a notice to the person.
- (4) The Director may impose conditions on any of the activities described in the strategy or NASM plan, or amend such conditions, as the Director considers necessary to prevent, decrease or eliminate an adverse effect or to prevent NASM from being managed in a way that is not in accordance with the standards established in the Nutrient Application Standards Regulation for OC1, OC2 and OC3 NASM.
- (5) If a strategy or NASM plan contains a condition imposed by the Director under subsection (4) or section 24, the person who owns or controls the agricultural operation,
- (a) shall ensure that the condition is complied with; and
 - (b) shall not, without the Director's approval, make changes to the strategy or NASM plan that are inconsistent with compliance with the condition.

(6) Subsection (5) also applies, with necessary modifications, if a strategy or NASM plan contains a condition amended by the Director under subsection (4) or section 24.

Annual review, update and summary

21.1 (1) The person who owns or controls an agricultural operation shall,

- (a) annually, review any nutrient management strategy, plan or NASM plan that,
 - (i) relates to the operation, and
 - (ii) deals with the preceding year, the current year or the following year;
- (b) if the strategy, plan or NASM plan deals with the preceding year, prepare a summary of the activities carried out under it during that year;
- (c) if the strategy, plan or NASM plan deals with the current year or the following year, prepare any update that is necessary to ensure that it accurately reflects the anticipated operation on the farm unit or NASM plan area during that year; and
- (d) keep the update and summary.

(2) The summary of a year's activities referred to in clause (1) (b) must be completed by February 15 of the following year.

(3) The update referred to in clause (1) (c) must be completed by February 15 of the year to which it relates.

Renewal after five years

22. (1) If a nutrient management strategy or plan is in force for an agricultural operation and if the operation is to continue being carried out after the strategy or plan ceases to be in force under subsection 15 (1) or 18 (1), as the case may be, a person who owns or controls the operation shall have a new nutrient management strategy or plan prepared for the operation at least 90 days before the original strategy or plan so ceases to be in force.

(3) If the Director does not approve or refuses to approve the new strategy or plan before the fifth anniversary of the day on which a Director gave the original approval, the new strategy or plan, incorporating all later revisions that the Director requests under clause 28 (2) (c), shall be deemed to be approved from the date of that anniversary until the earliest of whichever of the following dates are applicable:

1. The date on which the Director actually approves the new strategy or plan.
2. The date on which the Director refuses to approve the new strategy or plan.
3. The date on which a provincial officer or Director issues an order under section 19 of the Agricultural Nutrient Inspection and Orders Regulation stating that the new strategy or plan is no longer approved.

Renewal after less than five years

23. (1) If a nutrient management strategy that requires the approval of a Director is in force for an agricultural operation and the operation is to continue after the strategy ceases to be in force under subsection 15 (2), (3), or (4), a person who owns or controls the operation shall submit a new nutrient management strategy for the operation to a Director for approval before the original strategy ceases to be in force.

(2) If a nutrient management strategy that requires the approval of a Director is in force for an agricultural operation and the operation is to continue after the strategy ceases to be in force under clause 15 (5) (a), a person who owns or controls the operation after the change in ownership or control shall,

- (a) notify a Director of the change, no later than 15 days after it occurs; and
- (b) submit a new nutrient management strategy for the operation to a Director for approval, no later than three months after the change.

(3) If a NASM plan that requires the approval of a Director is in force for an agricultural operation and the operation is to continue after the NASM plan ceases to be in force under subsection 19.3 (2), a person who owns or controls the operation shall submit a new NASM plan for the operation to a Director for approval.

(4) During the period that begins when the original NASM plan ceases to be in force and ends on the date on which the Director approves the new NASM plan, no person shall,

- (a) receive Category 3 NASM, or Category 2 NASM that is CM2, on the NASM plan area; or
- (b) apply NASM described in clause (a) to the land of the NASM plan area.

(5) Section 21 applies to the application for approval submitted under subsection (1), (2) or (3).

(6) Despite section 6, if the person described in subsection (1) or (2) complies with the applicable subsection, the operation may continue to be carried out from the date on which the event occurs that causes the strategy or plan to cease to be in force until the earliest of whichever of the following dates are applicable:

1. The date on which the Director actually approves the new strategy or plan.
2. The date on which the Director refuses to approve the new strategy or plan.
3. The date on which a provincial officer or Director issues an order under section 19 of the Agricultural Nutrient Inspection and Orders Regulation stating that the new strategy or plan is no longer approved.

(7) Despite section 11.2, if the person described in subsection (3) complies with that subsection and with subsection (4), the operation may continue to be carried out from the date on which the event occurs that causes the NASM plan to cease to be in force until the earliest of whichever of the following dates are applicable:

4. The date on which the Director actually approves the new NASM plan.
5. The date on which the Director refuses to approve the new NASM plan.
6. The date on which a provincial officer or Director issues an order under section 19 of the Agricultural Nutrient Inspection and Orders Regulation stating that the operation may no longer be carried out under this subsection.

Amendment of approval

24 (1) A Director may amend an approval to impose, amend or remove conditions at any time after the approval is issued,

- (a) on his or her own initiative, if the Director considers it necessary to do so for the purposes of the Act or this Regulation; or

(b) with the consent of the person who owns or controls the operation or the farm unit on which the operation is carried out.

(2) On amending an approval under subsection (1), the Director shall notify the person who owns or controls the operation or the farm unit on which the operation is carried out of the amendment.

(3) If an approval is amended under subsection (1), the person who owns or controls the agricultural operation,

(a) shall ensure that the amendment is complied with; and

(b) shall not, without the Director's further approval, make changes to the nutrient management strategy, plan or NASM plan that are inconsistent with compliance with the amendment.

Suspension of approval

24.1 (1) A Director may suspend an approval issued under this Part for a nutrient management strategy or NASM plan for an operation if,

(a) the Director is of the opinion that the continuing usage of the strategy or NASM plan will result in a health hazard or an adverse effect; and

(b) one of the following conditions is met:

(i) the Director has given the person who owns or controls the operation or the farm unit on which the operation is carried out reasonable notice of a deficiency associated with the strategy or NASM plan and the person has not corrected the deficiency,

(ii) the conditions described in the strategy or NASM plan are not consistent with the conditions that exist on the operation or the farm unit on which the operation is carried out.

(2) A Director who suspends an approval for a nutrient management strategy or NASM plan for an operation shall notify the person who owns or controls the operation or the farm unit on which the operation is carried out of the suspension.

(3) A Director may reinstate an approval that has been suspended if the reason for suspending the approval no longer exists and there are no additional grounds for suspending the approval.

Revocation of approval

24.2 (1) A Director may revoke an approval of a nutrient management strategy or NASM plan issued under this Part if,

7. the approval was issued on the basis of false information or information that was incomplete;

8. the approval was issued in error or to the wrong person;

9. the person who owns or controls the operation or the farm unit on which the operation is carried out has not complied with the approval;

10. the approval has been suspended; or

11. the person who owns or controls the operation or the farm unit on which the operation is carried out consents to the revocation.

(2) A Director who revokes an approval for a nutrient management strategy or NASM plan for an operation shall notify the person who owns or controls the operation or the farm unit on which the operation is carried out of the revocation.

Registration

Registration of agricultural operations

25. (1) If this Regulation requires a person who owns or controls an agricultural operation to ensure that there is in force a nutrient management strategy for the operation but does not require that it have the approval of a Director, the person shall register the operation by filing with a Director a description of the operation prepared in accordance with the Nutrient Management Protocol.

(2) An agricultural operation shall be deemed to be registered under subsection (1) if this Regulation requires the person who owns or controls the operation to ensure that a nutrient management strategy is in force for the operation but does not require that it have the approval of a Director;

(3) If this Regulation requires a person who owns or controls an agricultural operation to ensure that there is in force a NASM plan for a NASM plan area on which the operation is carried out, but does not require that it have the approval of a Director, the person shall register the operation by filing with a Director a description of the operation prepared in accordance with the Nutrient Management Protocol.

SCHEDULE 1

CATEGORIES OF NON-AGRICULTURAL SOURCE MATERIALS

Table 1: CATEGORY 1 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Culled fruit and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	No additional analysis required.
2.	Peels and pomace produced from fruits and vegetables, other than cole crops and onions, but only if the fruits and vegetables have been processed without any use of chemicals, other than food grade chemicals used only to clean the food, the processing equipment and the surrounding area.	
3.	Leaf and yard waste that has not been composted.	
4.	Organic waste matter derived from the drying, cleaning and processing of field and nut crops.	
5.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada), excluding any materials that contain an animal product.	
6.	Aquatic plants.	
7.	Organic waste matter derived from the production of ethanol (plant based mash).	
8.	Any mixture of materials listed in Items 1 to 7.	
9.	Anything listed in Items 1 to 8 that is mixed with agricultural source materials, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	

Table 2: CATEGORY 2 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Leaf and yard waste that has been composted, but does not meet the requirements for Category AA or A compost in Part II of the Compost Standards.	Only if required under section 98.0.16 .
2.	Organic waste matter that contains no meat or fish and is derived from food processing at, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or (e) a brewery or distillery.	Only if required under section 98.0.16 .
3.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area of, (a) a bakery, (b) a confectionery processing facility, (c) a cereal and grain processing facility, (d) a snack food manufacturing facility, or	Only if required under section 98.0.16 .

	(e) a brewery or distillery.	
4.	Culled cole crops and onions, and peels and pomace from cole crops and onions, but only if the cole crops and onions have been processed without any use of chemicals, other than food-grade chemicals used only to clean the food, the processing equipment and the surrounding area.	Only if required under section 98.0.16.
5.	Fruit and vegetables, and peels and pomace from fruit and vegetables, that have been processed with the use of chemicals other than as described in Item 4.	Sodium; other parameters only if required under section 98.0.16.
6.	Fruit and vegetable processing water that contains no chemicals other than food-grade chemicals.	Sodium; other parameters only if required under section 98.0.16.
7.	Any mixture of materials listed in Items 1 to 6.	As required under section 98.0.16.
8.	Anything listed in Items 1 to 7 that is mixed with agricultural source materials, Category 1 NASM, commercial fertilizer, or compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards.	As required under section 98.0.16.

Table 3: CATEGORY 3 NASM

Item	Column 1 Materials	Column 2 Additional parameters to be analyzed
1.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a facility for processing, (a) meat, (b) eggs, or (c) dairy products.	Fats, oils and grease (FOG) and sodium; other parameters only if required under section 98.0.16.
2.	Paunch manure.	Only if required under section 98.0.16.
3.	Organic waste matter derived from the production of biodiesel.	Only if required under section 98.0.16.
4.	Organic waste matter from grease traps and interceptors.	FOG and sodium; other parameters only if required under section 98.0.16.
5.	Organic waste matter produced in a dissolved air flotation process used for the treatment of wastewater from food or feed processing or preparation facilities.	FOG and sodium; other parameters only if required under section 98.0.16.
6.	Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulations, 1983 (SOR/83-593) made under the Feeds Act (Canada) that may contain an animal product.	Only if required under section 98.0.16.
7.	Organic waste matter from the processing of fish.	FOG; other parameters only if required under section 98.0.16.
8.	Washwater, including materials containing food-grade cleaners, from cleaning the processing equipment and the surrounding area in a fish processing facility.	Only if required under section 98.0.16.
9.	Cooked pet food manufacturing waste.	FOG; other parameters only if required under section 98.0.16.
10.	Pulp and paper biosolids.	Boron; other parameters only if required under section 98.0.16.
11.	Sewage biosolids or any other material, other than untreated septage, that contains human body waste or results from the processing of materials that include sewage biosolids or human body waste.	Only if required under section 98.0.16.
11.1	Compost that meets the requirements for Category B compost in Part II of the Compost Standards, other than leaf and yard waste described in Item 1 of Table 2.	Sodium; other parameters only if required under section 98.0.16.
12.	Any NASM that is not listed in Table 1 or 2.	As required under section 98.0.16.
13.	Any mixture of materials listed in Items 1 to 12.	As required under section 98.0.16.

14.	Anything listed in Items 1 to 13 that is mixed with agricultural source materials, Category 1 or Category 2 NASM, commercial fertilizer, compost that meets the requirements for Category AA or A compost in Part II of the Compost Standards, or any other nutrient.	As required under section 98.0.16 .
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SCHEDULE 23

REGULATED METAL CONTENT OF NASM

Table 1: CM1 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	0.13	13
2.	Cadmium	0.03	3
3.	Cobalt	0.34	34
4.	Chromium	2.1	210
5.	Copper	1.0	100
6.	Lead	1.5	150
7.	Mercury	0.008	0.8
8.	Molybdenum	0.05	5
9.	Nickel	0.62	62
10.	Selenium	0.02	2
11.	Zinc	5.0	500

Table 2: CM2 NASM

Item	Column 1 Regulated metal	Column 2 Concentration in aqueous material (containing less than 1% total solids, wet weight), expressed as mg per litre	Column 3 Concentration in non-aqueous material (containing 1% or more total solids, wet weight), expressed as mg per kg of total solids, dry weight
1.	Arsenic	1.7	170
2.	Cadmium	0.34	34
3.	Cobalt	3.4	340
4.	Chromium	28.0	2,800
5.	Copper	17.0	1,700
6.	Lead	11.0	1,100
7.	Mercury	0.11	11
8.	Molybdenum	0.94	94
9.	Nickel	4.2	420
10.	Selenium	0.34	34
11.	Zinc	42.0	4,200

The [First Nation name] First Nation By-Law No. XX

Waste Management

A By-Law for the management of waste.

Whereas the Council of the [First Nation name] First Nation considers it to be expedient that rules and regulations be established for the collection, removal, and disposal of garbage, other refuse and recyclable materials for the purpose of protecting the well being of the residents of the Traditional Territory, from the health hazards associated with such;

And Whereas the Council of the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas the Council of the [First Nation name] First Nation is under Section 81(a) of the *Indian Act* to provide for the health of residents on the Traditional Territory, under section 81 (f) to provide for the maintenance of watercourses, and under Section 81(d) to provide for the prevention of nuisances;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation community to have a Waste Management By-law;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following By-law;

Short Title:

1. This by-law may be cited as the "*Waste Management By-law.*"

Interpretation:

2. In this by-law:

"Approved enclosure" means a type of enclosure designed for the storage of containers between collection times that prevents access to the garbage by domestic animals and wildlife and the design and construction of which has been approved by the Sanitation Administrator;

"Band" means the [First Nation name] First Nation;

"Collection" means the removal, from a premises, to a disposal location whether such removal is effected by the Sanitation Administrator or a Contractor under public or private contract, or an owner;

"Collection services" means the pickup and removal of garbage and/or recyclables by a Sanitation Administrator, a contractor under public or private contract, or an owner from the curbside of an owner's premises to a disposal location;

"Container" means a type of garbage container listed in Schedule "A" that has been designed by the Sanitation Administrator as being acceptable for use in the Territory or at specific locations on the Territory;

"Council" means the Council as defined in the *Indian Act*, of the [First Nation name] First Nation;

“Disposal” means the dumping of garbage and/or recyclables at designated spots at landfill sites on the territory by the Sanitation Administrator, or any other [First Nation name] First Nation employee, business owner, renter, lessee or owner during regular established hours;

“Garbage” means any type of non-toxic or non-poisonous solid, semi-liquid or liquid wastes, which the Sanitation Administrator deems acceptable for disposal or recycling at a landfill site and may include:

- (a) household waste, including but without being limited to, packaging of foods and goods which are non-recyclable;
- (b) bulky wastes, which includes any large item of refuse, including but without being limited to: appliances, furniture, vehicle parts under 35 kilograms, large containers and tree cuttings not exceeding 1m in length or 10cm in diameter, in bundles not exceeding 35kg;
- (c) construction and demolition waste, such as waste building material or rubble resulting from construction, repair, remodeling or demolition activity;
- (d) combustible rubbish, meaning burnable material, including but without being limited to: rags, cartons and boxes ineligible for recycling, wood, bedding, leather or plastics;
- (e) non-combustible rubbish meaning material which will not burn including but without being limited to: metal ceramics and glass;
- (f) yard rubbish, being pruning's, grass clippings, weeds, leaves, and general garden wastes, other than solid wastes;
- (g) liquid waste, being waste materials or substances that have sufficient moisture or other liquid contents to be free flowing but that are not suitable for disposal through a sewer system;
- (h) organic waste, including but without being limited to: green waste such as vegetables and fruit peelings, grass and weed clippings, or brown waste such as leaves, coffee grounds, woods shavings or hay;
- (i) solid waste, being the useless, unwanted or discarded solid waste materials resulting from normal human activities including semi-liquid or wet wastes with insufficient liquid content to be free flowing; and
- (j) trade waste, being petroleum products, scrap metal, machinery and vehicles and parts thereof;

“Hazardous waste” means any and all waste designated as hazardous, poisonous or toxic waste, in liquid, solid, gas or semi-liquid form, under any federal environmental law, including but without being limited to:

- (a) animal and agricultural waste, being manures, crop residues, animal offal such as carcass waste and entrails and other materials obtained from agricultural pursuits, stables, kennels, veterinary establishments and other such premises;
- (b) any waste which may present a hazard to a person, flora, fauna or public lands which includes but without being limited to: wastes of pathological, explosive, flammable, radioactive, or toxic nature;
- (c) sanitary wastes, consisting of any putrescible waste that is capable of producing conditions that may present a hazard to health;
- (d) natural waste including but without being limited to: tree stumps, soil, sand and stone; and
- (e) other special wastes, consisting of materials so classified by the Sanitation Administrator;

“Landfill site” means any landfill site on [First Nation name] Traditional Territory, as designated as such, from time to time by Council;

“Nuisance” means any act or activity that impairs by direct physical interference, the use and enjoyment of a person’s property or could prejudicially affect a person's health or comfort, including but without being limited to:

- (a) the indiscriminate throwing or dumping of garbage on roads and road allowance;
- (b) the abandonment of cars, used household appliances and furniture, or parts of cars, household appliances or furniture;
- (c) the storage of used tires;
- (d) the emission of smoke from burning tires, construction materials, household waste or any other waste;

“Officer” means any peace officer or any other person assigned by the Council whose duty is to preserve and maintain the public peace within the Territory and enforce the provisions of this by-law;

“Owner” means any person who has possession of land or a building on the [First Nation name] First Nation including leased land;

“Person” includes an individual (registered and non-registered [First Nation name] member), an association, a chartered organization, a firm, a partnership and a corporation.

“Premises” means any structure or property occupied or owned by an owner;

“Recyclable materials” means all materials enumerated on the Chippewa of the Thames First Nation reserve recycling program, which includes but without being limited to:

- (a) old corrugated cardboard, unless contaminated;
- (b) steel and aluminum cans;
- (c) all household plastic containers except pails and containers of hazardous products;
- (d) newspapers, magazines, phone books, catalogues, egg cartons;
- (e) all household paper including soft cover books;
- (f) clear and coloured glass, including bottles and jars;
- (g) metal foil;
- (h) milk or juice cartons;
- (i) Any other metal which is in the recycling stream which may be specified by the Sanitation Administrator, from time to time;

“Sanitation Administrator” means an employee duly appointed by the Council whose duties include the supervision and management of a landfill site and who will carry out and enforce the provisions of this by-law and shall include more than one person if so employed by Council;

“Service Fees” means a payment for collection and other services provided by the Band under the authority of this by-law.

“Street” means that portion of any thoroughfare, road, lane, avenue, parkway, viaduct, alley, square bridge, causeway, trestleway, or any other place, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of motor vehicles but does not include sidewalks, ditches, or right-of-way adjacent to a roadway;

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #XX;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law.

Schedules

3. The following Schedules form part of this By-law:

Schedule “A” - Types of Garbage Containers

Schedule “B” - Collection Service Fees

Schedule “C” - Exclusions

Schedule “D” - Fines and Penalties

Sanitation Administrators

4. (1) The Council may, by resolution, appoint one or more Sanitation Administrators; who shall be responsible for the administration of this by-law, monitor compliance of this by-law, provide information to the Council, and lay formal charges when this by-law has been breached.

(2) The Council may, in the resolution, provide for reasonable remuneration to be paid to a Sanitation Administrator.

Powers and Duties of the Sanitation Administrator

5. (1) A Sanitation Administrator shall:

- (a) answer such questions as related to the administration of this by-law; and
- (b) perform such other duties as may be assigned by the Council from time to time.

(2) An Administrator may:

- (a) inspect any garbage, hazardous waste, or recyclable material being brought into the landfill site and in so doing may require that vehicle or individual(s) to stop prior to entering the landfill area, for the purpose of conducting a visual or physical inspection;
- (b) refuse to accept garbage, hazardous waste or recyclable material which the Sanitation Administrator, in his/her unfettered discretion, determines does not originate from the Traditional Territory or from an owner, renter or lessee or cannot be considered garbage as defined in this by-law;
- (c) direct the disposal of garbage, hazardous waste or recyclables to a specific area of the landfill site;

- (d) require that any individual, owner, renter or lessee comply with the provisions of this by-law within a specified time period;
- (e) refuse entry to the landfill site to individuals who are not owners, renters or lessees or who are owners, renters or lessees who, in the opinion of the Sanitation Administrator, are not complying with the provisions of this by-law;
- (f) inspect and approve containers or enclosures to ensure that they meet the standards of this by-law;
- (g) terminate any activity or part thereof, if the activity is proceeding in contravention of this by-law or any other applicable by-law;
- (h) terminate or correct any activity or part thereof, where an unsafe or unsanitary condition is present;
- (i) remove any garbage or part thereof, disposed of in contravention of this by-law or other applicable by-laws;
- (j) direct that sufficient evidence or proof be submitted at the expense of the owner, to determine whether any method of disposal or container meets the requirements of this by-law;
- (k) make corrections to unsafe conditions or activities at the expense of the owner when due notice to correct unsafe conditions has not been complied with;
- (l) request that an officer assist in enforcing this by-law and lay charges where necessary.

Duties of an Owner

6. (1) With respect to garbage and recycling materials held for collection services every owner, renter or lessee shall:
- (a) provide and maintain, in a serviceable and sanitary condition, a sufficient number of containers to hold all garbage/recyclables accumulated on his/her premises at any time;
 - (b) subject to paragraphs (k), (l), and (m), ensure that all garbage is placed and remains in containers that are of a type set out in column I of an item of Schedule "A" and that meet the specifications set out in column II of that item;
 - (c) drain and wrap all wet garbage/recyclables before placing in a container;
 - (d) ensure that containers are set for collection at such places and such times and in such a manner to facilitate pickup and removal as the Sanitation Administrator may designate;
 - (e) store garbage between collection times in approved enclosures;
 - (f) ensure that all rigid containers and disposable plastic bag type containers are securely closed when set out for collection;
 - (g) remove all containers from their designated location on any street within such period as may be specified by the Sanitation Administrator;
 - (h) ensure that glass, and other sharp objects are packaged in such a manner that they may be handled safely by collection services;
 - (i) ensure that liquid waste, trade wastes, hazardous wastes, animal and agricultural wastes, and construction and demolition wastes are not set out for collection except at such times as may be determined by the Sanitation Administrator;
 - (j) extinguish all ashes or coals before setting them out for collection;
 - (k) remove all containers from their designated collection location on any road within such a period as may be specified by the Sanitation Administrator;
 - (l) keep the premises surrounding property free of garbage;

- (m) ensure that bulky wastes and/or rubbish are not set out for collection except at such times as may be determined by the Sanitation Administrator, outside of specified days bulky waste must be delivered to the landfill site;
 - (n) securely tie in bundles any combustible rubbish set out for collection and prepare yard rubbish, in accordance with any instructions of the Sanitation Administrator;
 - (o) prepare yard rubbish for collection in accordance with any instructions of the Sanitation Administrator;
- (2) Bulky waste will be subject to a dumping fee under Schedule "B", which will be set from time to time by the Council which will be in keeping with rates established by other First Nations and/or surrounding areas.
- (3) When using a landfill site it is the responsibility of the owner to:
- (a) transport garbage to a landfill site at times designated by the Sanitation Administrator;
 - (b) extinguish all ashes before depositing garbage at a landfill site;
 - (c) obtain a special permit, at the prescribed fee under Schedule "B", from the Sanitation Administrator prior to depositing all construction and demolition waste at a landfill site;
 - (d) ensure that all recyclables are sorted and placed in the designated recycling boxes and/or bag when set out for collection;
- (4) No owner shall create, cause or threaten to cause a nuisance within the Territory.

Duties of an Owner Engaged in Commercial Activity

7. (1) This section shall apply to any owner, without limiting the application of any other section, who engages in any trade, industry or commercial activity carried out for gain or profit within the Territory.
- (2) Every owner to whom subsection (1) applies shall, in addition to duties and responsibilities set out in section 7;
- (a) apply for an annual dumping permit from the Sanitation Administrator;
 - (b) adhere to all rules regarding garbage and recyclable materials as set out in this by-law;
 - (c) adhere to all rules regarding disposal of construction and demolition waste as set out in this by-law;
- (3) The cost to purchase an annual dumping permit (Schedule "B") will be set from time to time by the Council.

Garbage Collection Services

8. (1) The Council may provide for the collection of garbage in the areas of the subdivisions and at such times as it deems advisable.
- (2) The Council may at their discretion designate temporary or permanent alternate times and locations for collection services;

(3) Every owner whose premises is provided with collection services shall pay for garbage disposal in accordance with Schedule "B" at such times as the Council or Sanitation Administrator may designate;

Garbage Disposal at a Landfill Site

9. (1) Territory landfill sites and collection services shall not be used by any Band Members or any non-member not residing within the Territory unless authorized by the Council and a certificate of transportation is issued at a fee in accordance with Schedule "B";

- (a) A certificate of transportation shall specify:
- (i) the type of vehicle used to transport the waste;
 - (ii) the date and route of transportation;
 - (iii) the type and amount of waste being transported; and
 - (iv) any other appropriate conditions as determined by the Council.

(2) No person shall discard or dispose of or deposit garbage anywhere within the Territory except in such places and at such times and under such conditions as the Sanitation Administrator may authorize;

(3) All owners must divert all appropriate recyclable waste as defined in section 2, into the designated recycling boxes or depots;

(4) With respect to the disposal of tires:

- (a) All tires considered garbage as set out in section 2 must be disposed of at the landfill site and a disposal fee paid;
- (b) The cost of disposal fee shall be in accordance with Schedule "B" and may be changed from time to time by the Council;
- (c) In the instance of any uncertainty, the Sanitation Administrator may determine if any unused tires not stored in an enclosure shall not be considered garbage and disposal denied;

(7) With respect to the disposal of construction or demolition waste:

- (b) The disposal of all garbage generated as defined in section 2 from Territory construction or demolition projects shall require a permit issued by the Sanitation Administrator to be valid from inception of the construction or demolition project to the end of the project;
- (c) Permits required in this section shall fall into one of the following categories:
- (i) projects carried out by an individual or business where the service is conducted for profit or gain;
 - (ii) projects carried out by an owner for the benefit of home improvement or enhancement and not for payment, profit or gain;
- (d) The cost for each permit shall be in accordance with Schedule "B" and may be changed from time to time by the Council;

(8) With respect to the disposal of hazardous waste:

(a) No person shall dispose of, cause or permit to be disposed of, any hazardous waste, in or about a landfill site or anywhere within the Territory, unless directed by the Sanitation Administrator to dispose of it in a hazardous waste depot;

(9) No person shall operate a landfill site or facilitate the operation of a landfill site within the Territory without the Council's consent;

Unauthorized Disposal of Garbage

10. (1) All garbage and recyclable materials must be disposed of in designated landfill sites and in accordance with the rules of this by-law;

(2) No owner shall accumulate or allow to accumulate any garbage on his/her premises.

(3) No person shall burn any garbage or waste anywhere within the Territory unless granted permission in writing by the Council.

(4) Where, at any time, an officer has reasonable grounds to believe that a person is violating a provision of this by-law, the officer may, on reasonable notice to that person, inspect the area where he/she believes the violation is occurring.

Escape of Garbage from Vehicles

11. (1) No person shall convey or cause to be conveyed any garbage, hazardous waste or recyclable materials in a vehicle that is not properly constructed or covered to prevent contents thereof from escaping;

(2) In the event of an escape of garbage, hazardous waste or recyclable materials from any vehicle, the owner is responsible for the immediate clean up or could be fined for each bag exceeding the weekly limit (Schedule "D").

Yard Rubbish

12. (1) Subject to subsection (2), no person shall deposit any yard rubbish on a sidewalk or a street.

(2) Where the Sanitation Administrator has made an arrangement for the collection of yard rubbish on a sidewalk or a street on a day specified by the Sanitation Administrator, a person may deposit yard rubbish on that sidewalk or street on that day if the yard rubbish does not impede pedestrian or vehicular traffic.

Trespass on a Landfill Site

12. It is a violation of this by-law to enter onto the landfill site outside of operating hours without permission from the Council or the Sanitation Administrator.

Compliance

13. (1) The Sanitation Administrator may order that:

- (a) any person in contravention of this by-law must comply with this by-law without delay;
- (b) any activity contravening this by-law be immediately stopped, and;

(c) any action or situation which creates an unsafe or unsanitary condition regarding the garbage or hazardous waste be rectified to the approval of the Sanitation Administrator.

(2) The Sanitation Administrator is authorized to request that an officer assist in enforcing this by-law and lay charges where necessary.

(3) A person who fails or refuses to comply with an order made under subsection 13(1) or who resists or interferes with an officer acting under subsection 13(2) commits an offence.

Offences

14. (1) A person who

- (a) fails or refuses to comply with any provisions of this by-law;
- (b) submits false or misleading information to a Sanitation Administrator; or
- (c) interferes with or obstructs a Sanitation Administrator acting in the administration or enforcement of this by-law.

commits an offence

(2) Where an act or omission in contravention of this by-law continues for more than one day, such act or omission shall be deemed to be a separate offence committed on each day during which it continues, and may be punished as such.

(3) Where a corporation commits an offense against this by-law or any other law, each Director or Officer of the corporation who authorized, consented to, connived at, or knowingly permitted or acquiesced in, the doing of the act that constitutes the offense, is likewise guilty of the offense and liable, on summary conviction, to the penalty for which provision is made in subsection 14(4).

(4) Should a court determine a provision of this by-law is invalid for any reason, the provision shall be served from the by-law and the validity of the rest of the by-law shall not be affected.

Penalty

15. Every person who commits an offence under this by-law is liable on summary conviction to a fine not exceeding \$1000.00 or to imprisonment for a term not exceeding 30 days or both.

Appeal and Remedies

16. (1) Any person who has been charged under this By-law may appeal the charge by sending a written notice of appeal to the Council within 5 calendar days of having been served with a formal charge.

(2) The appeal shall be reviewed by the Council and a response provided to the person or persons charged within 10 working days of the receipt of the appeal.

SCHEDULE "A"

TYPE OF GARBAGE CONTAINERS

<p style="text-align: center;">Column I</p> <p style="text-align: center;">Type of Garbage Container</p>	<p style="text-align: center;">Column II</p> <p style="text-align: center;">Specifications</p>
<p>1. Rigid Metal or Plastic</p>	<p>70 cm maximum height; 45 mm maximum diameter; 150 L maximum capacity; 35 kg maximum weight when full; Tight fitting water proof cover; Two carrying handles permanently affixed to the sides.</p>
<p>2. Steel Refuse Containers</p>	<p>Well fitting and easily operated cover; Painted outside; Proper brackets for disposal vehicle attachment; Free from cracks or major dents; Proper base stands or wheels; Of a size approved by the Sanitation Administrator,</p>
<p>3. Disposal Plastic Bag</p>	<p>Close fitting; Waterproof; Thickness of 3/1000 in (.0762 mm); Maximum height of 100 cm; Maximum width of 70 cm; Maximum weight when full, 25 kg; Free from holes, tears or other damage.</p>

SCHEDULE "B"

COLLECTION SERVICE FEES AND OTHER APPLICABLE FEES

1. All year round Renters/Lessees shall pay a four hundred and fifty dollar (\$450.00) collection services fee provided for under the authority of by-law number 19-B-04 Waste Management.
2. All seasonal Renters/Lessees shall pay a four hundred dollar (\$400.00) collection services fee provided for under the authority of by-law 19-B-04 Waste Management.

3. Bulky Waste set out for pick up:

- (a) Appliances
 - (i) Refrigerators, Freezers, Air Conditioning units, Dehumidifiers or any other appliance, refrigerant not removed \$30.00
 - (ii) Refrigerators, Freezers, Air Conditioning units, Dehumidifiers or any other appliance, refrigerant removed \$15.00
 - (iii) other such as Hot Water Tanks, Stoves, Washers, Dryers, Propane Tanks (empty), Furnaces, TV's ect \$10.00
- (b) Furniture
 - (i) Tables, Couches, Chairs, Dressers, ect. \$10.00
 - (ii) Mattresses \$10.00

4. Bulky Waste delivered to Landfill Site:

- (a) Appliances
 - (i) Refrigerators, Freezers, Air Conditioning units, Dehumidifiers or any other appliance, refrigerant not removed \$20.00
 - (ii) Refrigerators, Freezers, Air Conditioning units, Dehumidifiers or any other appliance, refrigerant removed \$5.00
 - (iii) other such as Hot Water Tanks, Stoves, Washers, Dryers, Propane Tanks (empty), Furnaces, TV's ect \$5.00
- (b) Furniture
 - (i) Tables, Couches, Chairs, Dressers, ect. ..\$5.00
 - (ii) Mattresses \$5.00

5. Tire Fees:

- (a) Car Tires, 15" or smaller, with rims removed \$13.00.
- (b) Car Tires, 15" or smaller, with rims \$15.00
- (c) Tires larger then 16" with rims removed \$16.00
- (d) Tires larger then 16" with rims \$20.00
- (e) Truck Tires 20" and over \$25.00
- (f) Tractor Tires \$30.00

6. Permit Fees for Construction and Demolition Materials

- (a) projects carried out by an individual or business where the service is conducted for profit or gain:

- (i) \$180.00/ Pickup Truck
- (b) projects carried out by a renter or lessee for the benefit of home improvements/enhancements:
 - (ii) \$170.00/ Pickup Truck
- (c) projects carried out by an owner for the benefit of home improvement/enhancement and not for payment, profit or gain:
 - (iii) \$140.00/ Pickup Truck

7. Certificate of Transportation Fees

*Will be determined by Chief, Council and the Sanitation Administrator upon issuance of Certificate in consideration of the type and amount of Waste being transported. *

SCHEDULE "C"

EXCLUSIONS

[Specific Locations] are excluded from the following sections of By-law XX-XX:

SCHEDULE "D"

FINES AND PENALTIES

OFFENSE	FINE
Dumping in improper site	\$25.00 up to \$5000.00
Burning of Waste	\$50.00 up to \$5000.00
Escape of garbage from vehicle	\$50.00 up to \$5000.00
Trespassing on Landfill Site	\$25.00 up to \$5000.00
Exceeding limit for collection services	\$25.00 per bag
Exceeding limit for disposal at Landfill Site	\$25.00 per bag
Illegal dumping of garbage	\$100.00 per bag up to \$5000.00
Disposing of Hazardous Waste within the Territory	\$100.00 up to \$5000.00

BAND COUNCIL RESOLUTION

At a duly convened meeting held by the [First Nation name] First Nation Council on MONTH/DAY/YEAR the following resolution was enacted:

WHEREAS the [First Nation name] Band Council wishes to adopt a bylaw governing waste disposal and environmental protection with the matter arising out of or ancillary to the exercise of powers under ... and to the imposition of a penalty for a violation thereof;

WHEREAS the [First Nation name] Band Council is empowered to make such By-law pursuant to...;

WHEREAS it is considered expedient and necessary for the-benefit, health and safety of the inhabitants of the [First Nation name] First Nation to have a Waste Management By-law;

THEREFORE BE IT HEREBY RESOLVED THAT the [First Nation name] By-law No. XX - Waste Management By-Law be accepted as presented and attached.

The [First Nation name] First Nation By-law No. XX

Septic Re-inspection Program By-law

A By-law establishing and governing sewage system maintenance inspection programs for the protection of source waters.

A By-law to make provision for the protection of source waters on the [First Nation name] First Nation Traditional Territories.

Whereas the [First Nation name] First Nation is empowered under Section 81(a) of the *Indian Act* to provide for the health of residents on the reserve, under section 81 (f) to provide for the maintenance of watercourses, and under Section 81(d) to provide for the prevention of nuisances;

And Whereas the Council of the [First Nation name] First Nation understands harm to source water is hazardous to the health of residents and desire to bring activities that affect source waters under clear, concise environmental controls;

And Whereas, the malfunctioning of an on-site sewage system can have significant negative impacts on both human health and the environment;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation to have a **Septic Re-inspection Program By-law**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following By-law;

PART I

Purpose, Definitions and Administration

Short Title:

1. This By-law may be cited as the “*Septic Re-inspection Program By-law.*”

Interpretation:

For the purpose of this By-law;

2. (1)

“**Act**” means the *Building Code Act, 1992*, S.O. as amended

“**Building Code**” means *Ontario Regulation 332/12* as amended or as a regulation made under Section 34 of the Act which may include a more recent revision or amendment.

“**Building Inspector**” means an Inspector appointed under Section 3 of the Act and having jurisdiction for the enforcement of this Act, the Building Code, and this By-law.

“**Chief Building Official**” means the Chief Building Official appointed under section 4 of this By-law and having jurisdiction for the enforcement of this By-law. A Chief Building Official is deemed to also be a Building Inspector in accordance with this By-law.

“**Council**” means the Council of the [First Nation name] First Nation.

“**Effluent**” means sanitary sewage that has passed through a treatment unit.

“**By-law**” means the Septic Re-inspection Program By-law,

“**Maintenance inspection**” means an inspection conducted under a maintenance inspection program.

“**Maintenance inspection program**” means a program established under clause 7 (1) (b.1) or subsection 34 (2.2) of the Act.

“**Officer**” means a By-law Officer, Building Inspector, Chief Building Official or other person appointed to enforce the provisions of this By-law.

“**Owner**” means, in respect of the property subject to re-inspection takes place, the registered owner, a lessee and a mortgagee in possession

“**Sewage system**” means,

- (a) Class 1 sewage system including a chemical toilet, an incinerating toilet, a recirculating toilet, a self-contained portable toilet and all forms of privy, including a portable privy, an earth pit privy, a pail privy, a privy vault and a composting toilet system;
- (b) Class 2 sewage system also called a greywater system;
- (c) Class 3 sewage system also called a cesspool;
- (d) Class 4 sewage system also called a leaching bed system, or;

- (e) Class 5 sewage system which is a system that requires or uses a holding tank for the retention of hauled sewage at the site where it is produced before its collection by a hauled sewage system, where these;
- (f) have a design capacity of 10,000 litres per day or less;
- (g) have, in total, a design capacity of 10,000 litres per day or less, where more than one of these are located on a lot or parcel of land, and;
- (h) are located wholly within the boundaries of the lot or parcel of land on which is located near the building or buildings they serve.

“Traditional Territory” or “Territory” means the geographic area within Ontario identified as the Traditional Territory of [First Nation name] First Nation. This includes the lands, resources and waters over which Council has jurisdiction, and for greater certainty includes:

- i. the Indian Reserve known as [First Nation name] First Nation, Reserve #;
- ii. all lands which may be set apart as reserve lands for the exclusive use and benefit of the [First Nation name] First Nation;
- iii. any additional lands which might be covered by a [First Nation name] self-government, land claims or treaty agreement; and
- iv. any subsequent lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to [First Nation name] Lands that are part of the [First Nation name] First Nation by operation of law;

“Treatment Unit” means a device that, when designed, installed and operated in accordance with its design specification, provides a specific degree of sanitary sewage treatment to reduce the contaminant load from that of sanitary sewage to a given effluent quality.

(2) Any word or terms not defined in this By-law shall have the meaning as ascribed in the Act or Building Code. Terms not defined in the Act or Building Code shall have the same meaning as described in a standard Canadian dictionary

Chief building official, inspectors

4. The Council shall appoint a chief building official and such inspectors as are necessary for the enforcement of this By-law.

4.1 Every Landowner and Tenant will permit a Chief Building Official and any person authorized by the Band or the Chief Building Official (either generally or in any particular instance), upon reasonable notice, to enter in and upon the Land Owner's or Tenant's Lot and Buildings thereon for the purpose of inspecting any Sewage System.

General

5.(1) Except as provided in section 6 of this By-law, the septic re-inspection program will apply to all properties within 30 metres of a body of water, as identified in Schedule “A” attached to and forming part of this By-law, that utilize a sewage system.

(2) Every property owner shall complete the septic re-inspection in accordance with the timelines set out set in Schedule “A”; corresponding with the area their property is located.

Scope of Inspections

6.(1) The owner of every septic tank that undergoes a re-inspection shall, at their own expense, have the tank pumped by a certified septage hauler for the purpose of inspection of the condition of the tank by the third-party certifier.

(2) Scope of inspection and assessment shall be in accordance with the Re-inspection Forms created by the Chief Building Official.

Certificate as Alternative to Maintenance Inspection

7(1) The Council may accept third party certification as an alternative to conducting an inspection.

(2) Individuals undertaking third party certification shall be qualified for such assessment and shall not have any conflicts of interest as identified under the Act.

(3) The owner shall submit the completed third party inspection form to the Chief Building Official within the timelines specified in Schedule "A"; corresponding with the area their property is located.

(4) Notwithstanding the utilization of a third party certificate, a field inspection may be conducted by the Chief Building Inspector to confirm the satisfactory review of the field evaluation by the third party individual. Should an issue be discovered during the review by the Council, any fees incurred by the Council for the field review will be the responsibility of the owner and shall be billed in accordance with Schedule "B".

Forms

8. The Chief Building Official is the delegated authority to create and/or adopt for usage, forms (other than those prescribed by the Act or the Building Code) which provide for the collection of specific information in relation to that taken from the permit application where that information is necessary for the administration and enforcement of the Act and the Building Code.

Enforcement and Penalty

9.1 Council shall appoint a Chief Building Official, Building Inspectors and By-law Officers as are necessary for purpose of carrying out this By-law.

9.2 No person shall hinder or obstruct the Chief Building Official, Building Inspector and By-law Enforcement Officers in the enforcement of this By-law.

Penalties

10. Every person who violates this by-law is liable on summary conviction and to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 30 days or to both.

Proof of offence

11. In a prosecution for an offence under this By-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.

BAND COUNCIL RESOLUTION

At a duly convened meeting held by the [First Nation name] Council on MONTH/DAY/YEAR, the following resolution was enacted:

WHEREAS the [First Nation name] Band Council wishes to adopt a bylaw governing septic re-inspection program and prohibition of human activity in this zone with the matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act* and to the imposition of a penalty for a violation thereof;

WHEREAS the [First Nation name] Band Council is empowered to make such By-law pursuant to subsection 81(1) (f), (g), (q), (r) of the *Indian Act*;

WHEREAS it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation to have a Septic Re-Inspection Program By-law

THEREFORE BE IT HEREBY RESOLVED THAT the [First Nation name] By-law No. XX - Septic Re-Inspection Program By-law

The [First Nation name] First Nation Law No. XX

Wetland Zone By-law

A Law for the protection of wetlands.

A By-law establishing and governing wetland zones for the protection of Source Waters within the [First Nation name] First Nation Traditional Territories.

Whereas the [First Nation name] First Nation is empowered under Section 81(a) of the *Indian Act* to provide for the health of residents on the reserve, under section 81 (f) to provide for the maintenance of watercourses, and under Section 81(d) to provide for the prevention of nuisances;

And Whereas the Council of the [First Nation name] First Nation understands harm to wetlands is hazardous to the health of residents and desire to bring activities that affect wetlands under clear, concise environmental controls;

And Whereas the [First Nation name] First Nation recognizes a cultural responsibility to preserve the well-being of the land and environment for use by future generations;

And Whereas it is considered expedient and necessary for the benefit, health and safety of the inhabitants of the [First Nation name] First Nation to have a **Wetland Zone By-law**;

Now Therefore the Council of the [First Nation name] First Nation hereby makes the following by-law;

Short Title:

1. This by-law may be cited as the "*Wetland Zone By-law*".

Interpretation:

2. In this by-law:

"Chief" means the elected Chief of the [First Nation name] First Nation;

"Constitution" means the Constitution of the [First Nation name] First Nation;

"Contaminated soils" means the presence of hazardous waste or pollution in soils at concentrations that pose health and safety risks

"Council" means the branch of [First Nation name] First Nation constituted under Article 6 of the Constitution;

"Officer" means any peace officer or any other person assigned by the Council whose duty is to preserve and maintain the public peace within the Reserve enforce the provisions of this by-law;

"Person" includes an individual (registered and non-registered [First Nation name] member), an association a chartered organization, a firm, a partnership and a corporation.

"Reserve" means the [First Nation name] reserve #42.

"Waste" includes garbage, liquid and semi-liquid substances, landfill and scrap of all kinds any combination of the foregoing.

“Wetland” means land that,

- (a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,
- (b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- (c) has hydric soils, the formation of which has been caused by the presence of abundant water, and
- (d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d).

“Wetland zone” means areas within the Reserve that are,

- (a) a wetland; or
- (b) other areas where development could interfere with the hydrologic function of a wetland, including in areas up to 120 metres of all wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size.

Application of By-law

3. (1) The provisions of this by-law apply to the lands held by the [First Nation name] Band for the use and benefit of the [First Nation name] Membership as shown in: Schedule “A”

(2) Schedule "A", which is hereto attached, is a part of this by-law as fully and to all intent and purposes is to be read as though recited therein. Schedule A includes: [First Nation name] lots XX.

Prohibition

5. (1) No person shall:

- (a) engage in any business or activity within the wetland zone
- (b) engage in any business other than for hunting and gathering purposes
- (c) store or dispose of waste including burning of waste in the wetland zone
- (d) no person shall use the designated wetland zone for the storage/disposal, treatment, used land fill (engineered, trench, construction of demolition) tailing area of final disposal of contaminated soils, hazardous materials, corrosive material, flammable materials or gaseous, and any other type of toxic/noxious substance or material.
- (e) for the storage or disposal of any type of equipment.

Development prohibited

2) No person shall undertake development or permit another person to undertake development in or on a wetland zone.

Alterations prohibited

(3). No person shall straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or change or interfere in any way with a wetland.

Exception

6. (1) An applicant may apply to the Council for a variance to section 5 by providing a written request to the Council for a variance with accompanying supporting in relation to the request.

(2) Unless authorized by Council in writing, no variation of section 5 will be permitted.

(3) The decision of the Council on an application for a variance as set out in section 6(1) is final and binding with no right of appeal.

Offence

7.(1) A person who uses a wetland zone contrary to any provision of this by-law commits an offence

(2) A person who contravenes this by-law will be required to immediately cease activities as well as carry out and cover all costs related to a clean-up of the site as well as all present and future impacts on affected wetland zones.

(3) A person who interferes or obstructs the work of an officer in the application of this by-law commits an offence.

Appeal and Remedies

8. Any person who has been charged under this by-law may appeal the charge by sending a written notice of appeal to the [First Nation name] Band Council within [Number of day - suggestion of 5] calendar days of having been served with a formal charge.

9. The appeal shall be reviewed by the [First Nation name] Band Council and a response provided to the person or persons charged within 10 working days of the receipt of the appeal.

Penalties

10. Every person who violates this by-law is liable on summary conviction and to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 30 days or to both.

Restorative Justice

11. Despite section 10, the Council may refer any person who has taken responsibility for violating this by-law to the [First Nation name] Restorative Justice Program if, in the opinion of the Council:

- a. an individual has been harmed;
- b. there is a need to repair the harm;
- c. the [First Nation name] Restorative Justice Program will not cause further harm; and
- d. each individual harmed has assented to participating in the [First Nation name] Restorative Justice Program

BAND COUNCIL RESOLUTION

At a duly convened meeting held by the [First Nation name] Council on February 10, 2014, the following resolution was enacted:

WHEREAS the [First Nation name] Band Council wishes to adopt a bylaw governing a Wetland Zone and prohibition of human activity in this zone with the matter arising out of or ancillary to the exercise of powers under section 81 of the *Indian Act* and to the imposition of a penalty for a violation thereof;

WHEREAS the [First Nation name] Band Council is empowered to make such By-law pursuant to Section 82 subsection 81(1) (f), (g), (q), (r) of the *Indian Act*;

WHEREAS it is considered expedient and necessary for the-benefit, health and safety of the inhabitants of the [First Nation name] First Nation to have a Wetland Zone By-law;

THEREFORE BE IT HEREBY RESOLVED THAT the [First Nation name] By-law No. XX - Wetland Zone by-Law be accepted as presented and attached.