

DRINKING WATER PROTECTION LAW

LAW NO. 2019-02

[Short title: “*Drinking Water Law*”]

Date enacted: June 18, 2019

Coming into force: June 18, 2019

WHEREAS the Listuguj Mi’gmaq Government is committed to ensuring the health and safety of community members living in the community;

WHEREAS the Listuguj Mi’gmaq Government wishes to adopt a Law establishing an effective system designed to ensure the protection of community drinking water and free access thereto for all community members;

WHEREAS the Listuguj Mi’gmaq Government has the authority to make such laws based on its inherent right to self-government and self-determination, as recognized and affirmed under section 35 of the *Constitution Act 1982*;

WHEREAS articles 3, 4, 26, 29 and 34 of the *United Nations Declaration on the rights of Indigenous Peoples* (“UNDRIP”) recognize the right of the Mi’gmaq of Listuguj, as represented by the Listuguj Mi’gmaq Government, to autonomy and self-government in matters relating to their internal and local affairs in the exercise of their right to self-determination, the right to own, use, develop and control water supplies on their community lands;

NOW, THEREFORE, the Council of Listuguj Mi’gmaq Government hereby makes the following Law:

1. TITLE

1.1. This Law may be called the “Listuguj Drinking Water Protection Law”.

2. DEFINITIONS

2.1. In this Law,

“**Annual Drinking Water Report**” means a report prepared on an annual basis by a Drinking Water Officer pursuant to section 4.6 (d) of this Law;

“**Community**” means the Listuguj Mi’gmaq First Nation;

“**Council**” means the elected members of the Council of the Listuguj Mi’gmaq Government, including Chief and Councillors;

“**drinking water**” means water intended for ingestion by human beings for drinking, bathing or food preparation;

“**Drinking Water Officer**” means an official appointed under section 4.9 of this Law by LMG;

“**Drinking Water Advisory Committee**” means the Drinking Water Advisory Committee appointed by the Council pursuant to section 4.2 of this Law;

“**Listuguj Lands**” means any Listuguj Mi’gmaq First Nation land in which all members have a common interest;

“**LMG**” means Listuguj Mi’gmaq Government;

“**Member**” means a registered member of Listuguj Mi’gmaq First Nation;

“**Order-in-Council**” means a resolution in writing of the Council, passed by the majority of the Council members present at a meeting duly convened at which the quorum is present;

“**Person**” means an individual, corporation, enterprise, firm, association, syndicate or partnership, established or present on Listuguj Lands;

“**Public Health Authority**” means the director of Listuguj Community Health Services;

“**Resident**” means any individual who lawfully resides on Listuguj Lands, in accordance with the Listuguj Residency and Trespassing Law;

“**Risk Analysis**” means the review of risks associated with a particular event or action in relation to community drinking water that is analyzed on a quantitative and qualitative basis as a component of risk management;

“**Risk Management Plan**” means the forecasting and evaluation of risks with the identification of procedures to avoid or minimize their impact;

“**Water Supply System**” means the existing general water distribution system throughout Listuguj Lands;

“**Wellhead Protection Zone**” means the subsurface land area regulated to prevent contamination of a well or well-field supplying a public water system.

3. APPLICATION

3.1. This Law applies to all water sources and supplies within Listuguj Lands, excluding private wells or water supplies constructed by Residents for their personal use.

4. ENFORCEMENT AUTHORITIES

LMG

4.1. LMG shall act as the administrative enforcement authority that safeguards the interest, benefit and well-being of Residents in regards to clean and safe drinking water, notably by:

- a. enacting, modifying, reviewing and administering activities in relation to maintaining a clean and safe source of drinking water for Residents;
- b. acting as the water supplier;
- c. taking the necessary actions based on information and recommendations provided by:
 - i. the Public Health Authority; and,
 - ii. the Drinking Water Officer;
- d. engaging with available federal government services, where necessary, to ensure proper and timely drinking water monitoring.

Drinking Water Advisory Committee

- 4.2. The Drinking Water Advisory Committee shall be established by Order-in-Council and shall assume the following functions in an advisory capacity:
 - a. overseeing and reviewing activities throughout the Community that adversely or positively affect the health and safety of the Water Supply System;
 - b. working in conjunction with the Public Health Authority and LMG to maintain and ensure Residents' access to clean drinking water;
 - c. advising on the appointment of the Drinking Water Officer; and,
 - d. making any other decisions deemed necessary to ensure the proper implementation and fulfill the purpose of this Law.
- 4.3. The Drinking Water Advisory Committee shall consist of five (5) members, to be appointed by Order-in-Council.
- 4.4. To be appointed as such, a member of the Drinking Water Advisory Committee should be familiar with the current state of Community drinking water sources and supplies and with the Community environmental issues.
- 4.5. LMG and the Public Health Authority shall determine the eligibility criteria for Drinking Water Advisory Committee members. Priority shall be given to Community Members. In the absence of duly qualified and experienced Members, non-Members may be appointed, should they be knowledgeable of the current state of Community drinking water sources and supplies and with Community environmental issues.
- 4.6. Members of the Drinking Water Advisory Committee shall be appointed for a term of two (2) years, with the possibility of renewal for additional terms.
- 4.7. At all times, the Council retains the authority to replace any member of the Drinking Water Advisory Committee if the member resigns or becomes unable or unfit to assume its functions.

- 4.8. Unless a member of the Drinking Water Advisory Committee is an employee of LMG, the Council shall provide them with an honorarium for their attendance at meetings or expenses incurred in carrying out their functions.

Drinking Water Officer

- 4.9. A Drinking Water Officer is responsible for the monitoring and maintenance of the Community's drinking water supplies and system under the direction of LMG, including:
- a. monitoring levels of potential contaminants within the Water Supply System;
 - b. ensuring that maintenance is performed as required;
 - c. taking all necessary actions to mitigate potential risks and damages relating to the occurrence of a public health hazard; and,
 - d. preparing an Annual Drinking Water Report to be submitted to the Council on or before April 30th of each year detailing the health and status of drinking water-related measurements and supply system.
- 4.10. The Council shall appoint one or more Drinking Water Officer(s), as need be, by Order-in-Council. At any point of time, there should be at least one Drinking Water Officer in function.
- 4.11. To be appointed as such, a Drinking Water Officer should be:
- a. familiar with Community drinking water sources and supplies and Community environmental issues; and,
 - b. duly trained and qualified as a "Drinking Water Quality Monitor" in accordance with the standards of Indigenous Services Canada's Community-based Water Monitor Program.
- 4.12. The functions of a Drinking Water Officer shall be carried out by an existing LMG employee. The new functions and additional responsibilities shall result in an increase in salary and adjustment of other work conditions in accordance with the relevant LMG human resources policies.

5. DRINKING WATER SUPPLY

Water Supply System Must Provide Potable Water

- 5.1. LMG, as the water supplier, must ensure that all Residents have access to safe drinking water through the existing Water Supply System, with no obligation to extend or otherwise modify the existing system, and that the drinking water taken from the existing Water Supply System is:
- a. potable, and,
 - b. meets any additional requirements established by the Public Health Authority in the exercise of its duties.

Monitoring Requirements

- 5.2. LMG, as the water supplier, must:
- a. monitor drinking water sources, the water made available to the Residents through the Water Supply System;
 - b. require regularly scheduled sampling and testing of drinking water to be carried out by or as directed by the Drinking Water Officer;
 - c. instruct the Drinking Water Officer to ensure that any monitoring activity under this section be conducted in accordance with the standards and requirements of applicable regulations; and,
 - d. ensure that the results from monitoring analysis are included in the Annual Drinking Water Report.
- 5.3. If LMG is notified or otherwise made aware of a monitored parameter indicating that the Water Supply System fails to meet an established standard, regulation or recommendation, LMG shall:
- a. give immediate notice to the Drinking Water Officer and the Public Health Authority, and,
 - b. notify the Residents as early as possible by all available means, notably public notices at LMG offices, radio, local papers and social media.

Monitoring

- 5.4. The Drinking Water Officer should take all necessary measures to establish and maintain an inventory of potential sources of water contamination in the Wellhead Protection Zone surrounding production wells and make it available to the Residents. Potential sources of water contamination include but are not limited to:
- a. Oil and Petroleum Product Tanks or Reserves;
 - b. Septic Tanks;
 - c. Chlorine Products; and,
 - d. Pesticides.
- 5.5. The Drinking Water Officer shall work with the Public Health Authority to implement a monitoring, inspection, maintenance and repair plan for the Water Supply System to maintain an adequate level of safety and accessibility of drinking water.
- 5.6. Any Person having added or removed a potential source of water contamination to the Water Supply System or any other source of drinking water, or having been otherwise exposed to a potential source of water contamination, is required to notify LMG as soon as possible of the incident, regardless of its causes, nature and scope.

Public notice of threats to Drinking Water

- 5.7. The Drinking Water Officer, in consultation with the Public Health Authority, may recommend LMG to give public notice to the Community, if:
- a. the Drinking Water Officer receives a monitoring analysis report that indicates a significant rise in contaminants in the Water Supply System or other drinking water source;
 - b. the Drinking Water Officer receives notice that the Water Supply System is malfunctioning or is not meeting established standards;
 - c. the Drinking Water Officer is of the view that specific maintenance activities should be conducted;
 - d. the Drinking Water Officer considers that there is, was or may be a threat to any drinking water provided by the Water Supply System; or,
 - e. any other situation which requires notifying Residents of existing or potential risks.
- 5.8. Any and all potential hazards, as they relate to the Water Supply System or other drinking water sources, must be immediately communicated by a Drinking Water Officer to the Residents.

6. WATER SUPPLY SYSTEM ASSESSMENT

Water Supply System Assessments

- 6.1. LMG, in consultation with the Public Health Authority, shall prepare a written assessment of the Water Supply System once every two (2) years, or earlier if justifiably required by the Drinking Water Advisory Committee upon recommendation by the Drinking Water Officer.
- 6.2. The purpose of the assessment is to identify and assess:
- a. the sources of drinking water provided by the Water Supply System;
 - b. land use and other activities or conditions that may affect drinking water sources and supplies, including the Water Supply System;
 - c. the Water Supply System and its treatment and operation;
 - d. monitoring requirements for the water sources and supplies; and
 - e. threats to drinking water and threats to the Water Supply System.

Authority Over Water Supply System Assessments

- 6.3. Should the Drinking Water Officer recommend an assessment prior to the scheduled assessment, he/she must have sufficient reasons to believe that an assessment is imminently necessary to prevent risks and/or avoid further threats to the Community drinking water.

- 6.4. Should a scheduled assessment fail to occur, the Drinking Water Advisory Committee or the Drinking Water Officer must issue a reminder to LMG, reiterating the need for an updated assessment.

Scope of Water Quality Assessments

- 6.5. The Drinking Water Advisory Committee and the Drinking Water Officer may expand the scope of an assessment, but may not limit or remove items to be assessed within the original scope of an assessment.
- 6.6. The preparation process, form, content, area of coverage and allotted time for the completion of an assessment is to be determined by the Drinking Water Advisory Committee and may be expanded further by LMG to ensure the health and safety of Community drinking water, including the drinking water obtained from sources other than the Water Supply System.
- 6.7. The Drinking Water Advisory Committee and the Drinking Water Officer shall notify LMG of the necessity to expand scope of an assessment at the earliest opportunity and before the Public Health Authority is required to proceed with the assessment.

Notice to Community Members and Residents

- 6.8. When the Public Health Authority is required to prepare an assessment, a four (4) month notice must be given to the Community and a Community meeting must be held or the matter raised at the following Community meeting, in order to collect Community input relating to existing drinking water-related issues and concerns.
- 6.9. LMG must make the results of any assessment made under this Law available to Members and Residents through established means of communications, such as LMG website, social media and print.

7. DRINKING WATER PROTECTION

Guidelines Respecting Drinking Water Protection

- 7.1. LMG may establish:
 - a. guidelines and/or quality assurance standards;
 - b. directives for maintenance and/or Water Supply System modernization measures, to be applied and implemented by the Drinking Water Officer and other officials, in fulfilling their duties or functions under this Law;
 - c. operational directives and measures regarding emergency situations where the intervention of other qualified specialists, such as Environmental Health Officers or other Certified Public Health Inspectors of Indigenous Services Canada, or a technical firm or expert in the field of water protection, may be required.

- 7.2. The requirements of this Law are to be interpreted as constantly evolving in order to maintain the most updated standards, technologies and best practices in relation to drinking water.

Designated Protection Areas

- 7.3. Designated Protection Areas include:
- a. the Bacteriological Protection Area;
 - b. the Virological Protection Area;
 - c. the Environmental Protection Area; and
 - d. the Well Capture Zone,
- as appear in the map attached hereto as “Appendix A”.
- 7.4. The Drinking Water Officer should ensure that Designated Protection Areas are duly identified by signage as being monitored and/or protected, in accordance with the instructions of the Public Health Authority.

Hazard Management and Prevention

- 7.5. The Drinking Water Officer may make a preventative order under this Law if she or he has reasons to believe that:
- a. a drinking water health hazard is likely to exist; or,
 - b. there is a significant risk of an imminent drinking water health hazard.
- 7.6. A preventative order issued under this Law is directed to any Person(s):
- a. whose action or omission, such as a failure to report the presence of hazardous materials or spills of hazardous materials, resulted in or significantly contributed to the drinking water health hazard or risk as per a written report of the Drinking Water Officer; or,
 - b. having possession, charge or control of a condition or thing that, as per the written report of the Drinking Water Officer, caused or significantly contributed to a drinking water health hazard or risk.
- 7.7. The preventative order must be served to the Person(s) to whom it is directed and may require the relevant Person(s) to undertake the following at their own expense, depending on the circumstances:
- a. provide the Drinking Water Officer all information relating to the conditions or activities having resulted in or contributed to the drinking water health hazard or risk;
 - b. undertake investigations, tests, surveys and any other activities the Drinking Water Officer considers necessary to assess and determine how to address or prevent the drinking water health hazard and report the results to the Drinking Water Officer;

- c. take measures to remediate the drinking water health hazard;
 - d. adjust, repair or alter any works to the extent reasonably necessary to control, manage, stop or prevent a drinking water health hazard;
 - e. assist in the preparation and implementation of a hazard remediation plan on a case by case basis that is acceptable to the Drinking Water Officer to allow for hazard specific management plans.
- 7.8. Prior to issuing a preventative order under this Law the Drinking Water Officer shall issue a notice addressed to the Person(s) described in section 7.6,
- a. setting out the reasons of the notice;
 - b. providing five (5) business days to respond to the notice; and,
 - c. providing ten (10) business days, as of the date of the response or expiry of the five (5)-day time limit, to rectify the situation.
- 7.9. A preventative order issued under this Law may authorize any qualified professionals designated by the Drinking Water Officer to enter in Listuguj Lands for the purposes of controlling, analyzing, remediating or preventing a drinking water health hazard.
- 7.10. The Drinking Water Officer may amend or cancel a preventative order made under this Law if or he has sufficient substantiated reasons to believe that the potential for a drinking water health hazard or risk has ceased to exist or has diminished.

8. DRINKING WATER PROTECTION PLANNING

Designating Areas for the Planning Process

- 8.1. LMG may designate or re-designate an area for the purpose of developing or updating a drinking water protection plan.
- 8.2. The Public Health Authority must consider recommended area designations or re-designations made by the Drinking Water Officer, and, exercise its discretion to decide whether or not to redirect the Drinking Water Officer recommendation to LMG.

Protection Plan Development Process

- 8.3. LMG may, upon recommendation by the Public Health Authority, establish the process by which a proposed drinking water protection plan for a designated area is to be developed by establishing:
- a. a technical advisory committee to oversee the development of the protection plan; and,
 - b. terms of reference for the protection plan, including the professional(s) responsible for preparing the proposed protection plan, applicable time limits and process.
- 8.4. The proposed terms of reference for the development of a drinking water protection plan must include:

- a. the purpose of the plan;
 - b. issues to be addressed;
 - c. a process for Community consultation;
 - d. a timeline for completing the plan;
 - e. a summary of additional measures to be taken, including whether changes are required to the Water Supply System, such as measures respecting the water source, intake, treatment, storage and distribution;
 - f. an indication of whether the operating of the Water Supply System should include additional provisions with respect to monitoring standards and other requirements; and,
 - g. due consideration of the economic and social costs and benefits of addressing threats and risks through treatment, source protection and other means.
- 8.5. LMG may extend the time for completing a proposed drinking water protection plan, upon recommendation of a technical firm or expert in the field of water protection, if:
- a. the proposed extensions are justifiable due to unforeseen circumstances or information uncovered throughout the process; and/or,
 - b. an imminent health hazard risks requires immediate maintenance or remediation.

Drinking Water Officer Authority in the Planning Process

- 8.6. During the development of a proposed drinking water protection plan, the Drinking Water Officer and the established technical advisory committee may:
- a. undertake investigations, tests and surveys that they believe to be advisable;
 - b. authorize investigations, tests and surveys to be undertaken; and,
 - c. advise LMG if the protection planning in progress fails to adhere to the norms and standard established by industry best practices.

Review and Approval of a Drinking Water Protection Plan

- 8.7. Upon completion, the proposed drinking water protection plan must be submitted to LMG who shall consult with the Community, including the Drinking Water Advisory Committee and the Drinking Water Officer for its review.
- 8.8. The Drinking Water Advisory Committee will be given sixty (60) days to conduct reviews and make recommendations to LMG for purposes of adopting the proposed drinking water protection plan.
- 8.9. The Drinking Water Advisory Committee may seek an extension of delay if the circumstances are deemed justifiable by LMG.
- 8.10. The plan may be approved in whole or in part by Order-in-Council of LMG. Unapproved parts or sections of the drinking water protection plan may be:

- a. postponed to be addressed in the following Water Supply System Assessment; or,
- b. removed for reasons such as, but not limited to:
 - i. low level of risk;
 - ii. lack of financial practicability;
 - iii. lack of social or health benefits; and/or
 - iv. futility of action.

Should a part or section of the drinking water protection plan describe the potential for a health hazard, it may not be removed.

Issues pertaining to Residents' health and safety in relation to drinking water are to be addressed immediately.

9. PROHIBITIONS AND RESTRICTIONS

Prohibition against contaminating Drinking Water or tampering with Drinking Water Supply System

9.1. No Person shall:

- a. introduce anything or cause or allow anything to be introduced into the Water Supply System, or any other drinking water source or well recharge zones adjacent to a drinking water source;
- b. engage in any activities that may threaten the health of the Water Supply System or any other drinking water source;
- c. destroy, damage or tamper with any part of the Water Supply System; or,
- d. open, close or modify in any way any part of the Water Supply System without the supervision of the Drinking Water Officer,

9.2. The prohibitions listed above do not apply:

- a. if they occur in the course of and as a result of the proper operation, maintenance or repair of the Water Supply System or the treatment of drinking water therein; or,
- b. if the activity is authorized by LMG or required under an LMG law or by-law;

Prohibition Against Natural Resource Drilling

9.3. Under no circumstances is a Person permitted to:

- a. conduct a survey of public water supplies, wells, reservoirs and other water sources;
- b. drill or extract natural resources including oil, gas and minerals, in the proximity of the Water Supply System or its sources, Designated Protection Areas or other designated areas where drinking water intersects with other bodies of water.

Housing and Infrastructure Developments

- 9.4. Unless otherwise provided by a specific Order-in-Council in each case, there shall be no further housing or infrastructure developments within a two-hundred (200) metre radius of the Designated Protection Areas and the main drinking water sources.
- 9.5. LMG may exceptionally authorize such development in the areas described in section 9.4 of this Law after:
- a. having taken into consideration the recommendations made by a certified environmental consulting professional upon conduction of an adequate Risk Analysis;
 - b. having been advised by the Drinking Water Advisory Committee on potential impacts of the proposed development;
 - c. having determined that the development project is of minimal risk for the Community drinking water; and,
 - d. if such determination cannot be made with reasonable certainty, having put in place an adequate Risk Management Plan for a period of at least five (5) consecutive years.
- 9.6. For greater certainty, LMG shall not be responsible for accommodating Residents using or planning to use private wells or water supplies constructed by Residents for their personal use, and has no obligation regarding their maintenance and protection.
- 9.7. Sections 9.4 to 9.6 of this Law may only be amended or repealed once an alternative drinking water source is secured and functioning, delivering clean drinking water as a secondary or new main source.

Other Offences

- 9.8. An offence is committed by any Person who:
- a. violates any of the provisions of this Law;
 - b. causes or permits any act to be committed in contravention or violation of any of the provisions of this Law;
 - c. neglects or omits to do anything required under this Law;
 - d. carries out, causes or permits to be carried out any development in a manner prohibited by or contrary to any of the provisions of this Law;
 - e. fails to comply with an order, direction or notice given under this Law; or
 - f. prevents or obstructs, or attempts to prevent or obstruct the work of:
 - i. LMG,
 - ii. the Public Health Authority,

- iii. the Drinking Water Advisory Committee or the Drinking Water Officer, as provided for under this Law.

10. PENALTIES

10.1. Any Person who contravenes any provisions of this Law commits an offence and is liable on summary conviction in a court of law to:

- a. a fine not exceeding \$ 1000.00;
- b. imprisonment for a term not exceeding thirty (30) days or an equivalent amount of community service; or,
- c. both of the above;

the determination of the penalty to be made by the presiding judge in the court of law where the summary conviction matter is heard.

10.2. Each day a Person is in contravention of the provisions of this Law represents a separate offence under this Law and subject to the penalties set forth in section 10.1.

10.3. In addition to any other penalty provided for under this section, the Council of LMG can apply to a competent court to obtain an order prohibiting the continuation or repetition of an offence.

11. COMING INTO FORCE

11.1. This Law shall come into force on the day of its enactment.

THIS LAW IS HEREBY enacted by a quorum of Council at a duly convened Council meeting of the Listuguj Mi'Gmaq Government on this [•] day of [•], 2018.

Quorum: _____

_____ Chief

_____ Councillor

_____ Councillor

_____ Councillor

_____ Councillor

_____ Councillor

_____ Councillor

Councillor

Councillor

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Councillor

Councillor

Councillor

I, _____ Chief/Councillor of the Listuguj Mi’Gmaq Government, do hereby certify that a true copy of the foregoing Law was published in the *First Nations Gazette*.

“APPENDIX A”

