

SANITARY CONDITIONS LAW

Second Reading

November 2, 2011

MOOSE LODGE

Present:

Kahnawake Legislative Coordinating Commission (KLCC)

Kahente Horn-Miller, KLCC Coordinator

Joe Delaronde, KLCC - Communications Representative

Ron Sky, KLCC - Justice Representative

Mike Bush, KLCC - Chiefs Advisory

Clinton Phillips, KLCC -Chiefs Advisory

Kahsennenhawe Sky-Deer, KLCC - Chiefs Advisory

Martin Leborgne, KLCC - Chiefs Advisory

Lands Unit

Heather Jacobs-Whyte

Eva Johnson

Debbie Morris

Melanie Gilbert

Francis Walsh – Legal Representative

Chiefs

Rhonda Kirby

Carl Horn

Community Members

Note Taker

Leslie Skye

Opening

Kahsennenhawe Sky-Deer

Kahsennenhawe opened the meeting with the Ohenton Karihwaterhkwen.

Rules of Conduct

Joe Delaronde

Joe asked that people use the microphone when speaking before he reviewed Rules of Engagement/Meeting Guidelines. He also stated everyone that we are here to build consensus.

**Introduction & Reading of
Sanitary Conditions Law Amendments**

Kahente Horn-Miller

Kahente gave brief overview of why we are amending the Sanitary Conditions Law (SCL) noting background points she then read aloud the five sections that amended to the Sanitary Conditions Law.

Second Reading

Sanitary Conditions Law

FINAL Minutes – November 2, 2011

Review of New Amendments

Heather Jacobs-Whyte

Amendments second part of a three-part project from 2010. The third part will allow the Lands Unit to write Regulations. The Sanitary Conditions Law is an Environment Law. The Lands Unit has been working with the CDMP.

The SCL was has been amended four times since 1968. Amending the SCL will enable writing of Regulations, enhance MCK authority, outline permit process for Demolition Waste Recycling business operations in the community and apply standards for accountability for both Kahnawake and the business operator.

An explanation of amendments was given, specifically to: Section 1- Definitions, Section 2 #16, 19, Section 3 #20 & #21.2 (new)

During the second 30-day review 80 people accessed the document on the website. With 75 people opening the website & 5 people that picked up law. Nobody objected with protection of environment. Report submitted to KLCC with recommendations that if not a lot feedback from this second reading then we should proceed to Third Reading. The only complaints received from people were about the CDMP.

Overview of Operational Components

Eva Johnson

Implementation plan to put amendments in force. Lands Unit responsibility is to minimize pollutants to land, water and air. Obtaining permits is basically the same process as has been in place since 1987. The MCK would be responsible to issue permits and monitor demolition waste recycling receptor sites.

Notes the impact on the different MCK operations such as the Kahnawake Peacekeepers for monitoring vehicles to ensure they are in possession of necessary documentation. The Environment Unit presently only has 2 inspectors. Stakeholder's consultation was held with different units.

Open Floor

Ron Skye

Comments/questions/statements about the changes to the SCL from community members began by noting that the definition of *Activity* was vague.

SECTION 1 DEFINITIONS - 1.1 "*Activity*" means the undertaking of an operation, of an industry, of an industrial process or to increase the production of any goods or services that seems likely to result in an emission, deposit, issuance or discharge of contaminants into the environment or change in the quality of the environment. For further clarity, "activity" will not include works carried out on a residence used solely for residential purpose."

Question: Do you have a list of the different industries in Kahnawake that are classified under this section?

Response: It's any industry. There is no list, no types. We made that definition broad enough; what may not be here today may be in 25 years. Broad enough to encompass

what can be and what is. If the business does not discharge contaminants or change the quality of the environment then it is not included in this definition.

Question: A question was raised about the tobacco industry requiring a permit. The tobacco industry is in the process of making its own laws and regulations when it comes to health, safety and environment.

Response: It's called collaborating with what already exists. We looked at what already exists. The tobacco industry would also have to go through the decision making process.

Question: That's not my question. My question is why should we have to get permits for the same reason, when we're making permits for the same thing?

Response: You need to get one permit, and it's probably this one.

Statement: The tobacco industry is going to have a big problem with having to get back dooring permits with this system, when we're going to have our own system in place.

Response: Not sure if I understand when you say back door, but when we develop these permits it's going to be specifically for demolition waste recycling. But it does say that any operation that can issue contaminants into the environment and change the quality will need a permit. We have several laws already in existence, and have permits for the gaming, alcohol and for the Mercier Bridge. If it has its own permit system, it uses its own permit system. This one pertains to global stuff. This responds to things that aren't in existence. I can't say that any kind of law that comes out of the tobacco group will have to follow under this. Maybe or maybe not, maybe you'll collaborate and maybe you won't. But there needs to be permits for anything that will contaminate our environment. That's the bottom line.

Statement: This should be clarified. It's too broad. It should list all the types of industries. Then it could be added on in the future.

Response: Then you lock in and it's not global.

Comment: You keep talking global. We're talking about Kahnawake.

Response: Global in terms of the entire community.

Comment: ...people want to know if they are going to be affected.

Response: We'll be seeing things fleshed out in the Regulations. The Regulations will have more detail. It may or may not list different businesses.

Comment: It's too broad. I would like to see a list. Everybody out there that is working in some type of industry in Kahnawake is going to want to know if this is going to affect them. If you're going to write it that it's going to affect everybody, then write it that way.

Response: But it's not going to affect everybody.

Comment: Then put a list out.

Response: It's not going to affect everybody. SECTION 1 - 1.1 *"to increase the production of any goods or services that seems likely to result in an emission, deposit, issuance or discharge of contaminants into the environment or change in the quality of the environment."* The majority of the businesses are not going to change the quality of the environment.

Comment: This is just not clear enough for me.

Response: Noted for consideration.

Question: Is there going to be a charge for permits? Will regulations go to community for acceptance?

Response: Permits are for trucks for businesses coming into Kahnawake. Whoever is transporting the Demolition Waste Recycling will have to get a permit. Eva stated in her presentation that Kahnawakehrónon will have operational agreements. Part of the regulation will explain what you have to do and what you need to consider in protecting the environment.

Yes, regulations will go to a community review period.

Question: Will the regulations be shown or just presented to the people?

Response: Not a defined process for writing regulations. Have to consider how to bring to community. Have to understand the purpose of what we're doing. The Legislative Coordinating Commission's website - kahnawakemakingdecisions.com has a list of laws & regulations. Have they (regulations) been brought to the community in the past? No, don't think so. Will regulations go to the community? Yes. Will the community have opportunity for feedback? I think so. There'd have to be feedback mechanism worked in that would engage the community as well as the Chiefs.

Question: What is the difference between a law and a regulation and how the Legislative Coordinating Commission will address those?

Response: The law comes first. The regulations come afterwards. The law allows an entity to make regulations. Example, the ABC Law itself gives the ABC Board authority to make regulations. The process used in that law is that they have to post for 30 days to receive feedback, and then adjust depending on community feedback, changes or modifications to the regulations.

In this type of law, which is a Type 2 and is more regulatory in nature, the responsibility of government is to ensure the protection of environment and the people. There's an understanding from the private sectors and how you balance that. Ensure protection by government for the people. There has to be that balance of ensuring the protection of the community and environment. That's why we have these forums with mechanisms involved with law making. Law passing was changed with the consensus of the people who said they want to be involved in making regulations.

Statement from community member: Applauds CDMP Type I process but not the Type II. Believes everything should be Type I with people telling government what to do and the government implements.

Response: Speaker responds by stating off topic and invites community member to a KLCC meeting to discuss further.

Question: The regulations will be brought to the community but will not have community input?

Response: No, there will be input.

Response: This is a new process. All of the feedback received is considered. If there is a problem, we will discuss at KLCC. The question of how we should deal with regulations will be brought back to KLCC? I'll put the question to you. Should the

community be involved in creating regulations? This will be taken back to KLCC for debate and further discussion.

Community member questions SECTION 2 - 13. SCRAP PROHIBITED *"No person shall store, keep, maintain, erect or allow on his property any sign, poster, wreck, scrap, junk or vehicles of any kind no longer capable of being used or driven for the purposes for which they were built, on any property, premises or place. This prohibition applies throughout the Mohawk Territory of Kahnawà:ke."*

Response: The Lands Unit dealt with this question in the spring. It was documented. Notes recommendation was to put this whole law through a general/complete review because it's outdated and written in 1968. Lands Unit had a goal to write regulations, so we're not touching every a, b, & c in the law. Otherwise we'd never stop amending law and have to put demolition waste recycling through now. Scrap is out of scope. *It will be noted for the record that this area (#13 Scrap Prohibited) was brought up again.* The recommendation is to put the law through the legislative calendar for an entire review, but not doing that now. This is called an amendment, not changing the law.

Question: What if he asked to have the law amended now? Would that be considered?

Response: No not now. But it doesn't prohibit him from making a recommendation to the KLCC that he'd like to see the whole law revised. Remember the scope, purpose and intent given by Council and mandated to the Lands Unit was specific to deal with. Not the whole law. Need a place to start and this was best way to do it.

Statement: You ask for input but deny it, so why ask when you're not taking opinions from people. ...You're not listening.

Response: You need to understand the mandate that was given. The Lands Unit has to do this first. They know the whole law has to be rewritten. Need starting point. No argument about protecting environment. That's what this is about. It's not about restricting businesses. If individual entrepreneurs taking it that way that's not the intent.

Statement: Advises community members to write a letter to KLCC stating that they want the law changed and it has to be addressed. Ask for certain areas in the law to be omitted.

Question: SECTION 3 - 21.1 PENALTIES - *"Any person who contravenes any provision of the Law, or any regulation adopted pursuant to it, shall be guilty of an offense and shall be liable on summary conviction to a fine of:*

- (a) *In the case of an individual:*
 - (i) *\$500.00 for the first offense;*
 - (ii) *\$1000.00 for the second offense; and*
 - (iii) *\$5000.00 for each subsequent offense; or*
- (b) *In the case of a corporation, company, partnership or any other commercial entity:*
 - (i) *\$2000.00 for the first offense;*
 - (ii) *\$5000.00 for a second offense; and*
 - (iii) *\$10,000.00 for each subsequent offense;*

and in addition to a fine, be subject to imprisonment for a term not exceeding six (6) months."

Where you going to send them to prison?

Response: Have reciprocal arrangements in place to handle this.

Gives example of company dumping loads of toxic material and has been fined twice. Now have option of remediation or sending them to jail.

Question: What about cleanup? How long would that take and who's responsible?

Response: That's the remediation part that the court could order. In the law it's the MCK that's responsible and they would charge/back charge.

Statement: The company dumping the toxins and the landowner would be responsible to ensure cleanup.

Statement: If the Environment is concerned with dumping just stop the dumping altogether.

Response: Write letter stating that you would like the SCL abolished.

Response: The Lands Unit had to write letter. We're not exempt. ...Balance of economics, business, public health & safety and environment.

Statement: It's the people from the outside that we have to worry about. If they don't come here to dump then we wouldn't have any trouble.

Question asked to Eva: Confirmed landfill operation across from Environment Office that's been issued a permit and the fill is being inspected.

There's a problem with landfilling right now. It's not supposed to be a business but there are people with private property that want to use landfill.

Question: Give an example of how this is going to work?

Response: According to the Clean Soil Policy, they fill out a request for landfill. Similar process but in this case the person that wants to run a business. Currently there are no regulations. There's nothing that compels them to give proof about toxins. It can be done properly. We're in a position right now to pass something. If we weren't in a position, I'd be the first one to ask Council for moratorium that would stop landfill in Kahnawake. If you can't regulate it, it doesn't make any sense to allow it.

Question: Is it inspected?

Response: Yes. There's no fail safe. We can't inspect every load, not when you have 400 loads. Are they coming from the same place? That's why we have it as an amendment and not a new law, because we need to do this immediately. If this law doesn't go through, I will make a recommendation to Council to put a moratorium on all landfill in Kahnawake, because we can't keep track of the landfill that's coming in. It's too hard to regulate. There's too much money changing hands. We can't keep track of some of the landfill that's coming in.

Question: Are inspectors appointed by MCK or the Environment? Don't they already have their inspectors?

Response: Someone has to give them the authority. It says appointed by the MCK, who is the elected government. Not getting into a debate of traditional; that's not what we're looking at. In the law itself someone has to give that authority. The MCK or its designate. Could be the Landfill office

Question: Section 2 – 18. AUTHORITY OF INSPECTORS, “Any inspector appointed by the Mohawk Council of Kahnawà:ke pursuant to the present Law or designated by regulation, shall have the authority to enter any property, premises or place situated on the Mohawk Territory of Kahnawà:ke at all times for the purpose of inspecting such property, premises or place to determine if there has been proper compliance by any person with the present Law.”

That could be my house at 3:00 a.m.?

Response: I’d say no. You can’t enter someone’s house without a search warrant. We’re not abusing anyone’s rights. We’re looking at a structure that’s a business not a personal domicile. It doesn’t apply to homes.

Question: Does it apply to entire law or just for landfill policy? You say we can’t talk to these other sections; only these amendments, but what’s being asked refers to the original law.

Response: That law was made in 1968 so in effect it’s still a law. Those provisions that were there in 1968 still apply. The Peacekeeper’s can enforce this law; it doesn’t have to be an inspector.

Comment: It’s not clear.

Statement: Section 2 – 18. AUTHORITY OF INSPECTORS –“Any inspector appointed by the Mohawk Council of Kahnawà:ke pursuant to the present Law or designated by regulation, shall have the authority to enter any property, premises or place situated on the Mohawk Territory of Kahnawà:ke at all times for the purpose of inspecting such property, premises or place to determine if there has been proper compliance by any person with the present Law.” You have to have someone watching. You have to have inspectors. So what is going to be coming out, what is going to be fleshed out in the regulations on inspectors is what is going to be coming up. That’s why we put that in, because we’re going to flush it out in the regulations.

The Lands Unit is very mindful of the financial constraints of the MCK. Looking at what we already have instead of creating new...Laws create order. No laws create disorder...The regulations are going to expand on the role, the authority and the job of the inspector... We’re writing regulations for demolition waste recycling.

Question: The inspectors will only be for landfill and demolition waste?

Response: Not for landfill from landfill.

-Inaudible - Outbursts from community members-

Response: Anything that has a permit would be allowed to be inspected. It doesn’t mean that an inspector, or Peacekeeper or Conservation Officer is going to come into my house at any time of the day or night. If I have a permit and I’m operating a business, there is a possibility.

Statement: If you have a permit and landfilling at 3:00 a.m. that might be an issue, that’s shady business, then yes you will be inspected at 3:00 a.m. We have 7 of the worst dumpsites in the country; because people were dumping at 3:00 a.m. ...We’re still trying to clean that up. People don’t have respect anymore...We wouldn’t have laws if we had respect and were keepers of the earth and respectful, but we’re not.

We're all part of MCK with recommendations from different units...We take recommendations when we have to make decisions...We're all from this community. Do you think we want to make a decision that is bad or is going to harm anyone? We all have to live here. We all have children, grandchildren. It's all part of who we are and how we're **supposed to be** about taking care of one another. But we don't. That's why we need to have these laws now...People have no idea what junk and scrap cars does to the water.

Encourages community members to observe what goes on at Council for a week to see the types of decisions made.

Comment: This Process could work with more participation from community and not just MCK employees. ...People I speak to don't believe in this process at all. I'm not completely into this process yet. ...You should have put another law first. ...I like the Type I process but not the Type II. The Longhouse doesn't seem to want to do anything. ... They should be doing this, but they don't want to do anything. ...People feel it's an MCK initiative.

Response: Heard before. The CDMP derived out of MCK but the idea came from the community. If community does not want to participate then that's their choice, but they have the opportunity whereas they didn't before.

Comment: Historically we stacked meetings with family and friends attending making decisions. Don't see any difference with the CDMP. Type II process is not a good thing.

Response: The overriding responsibility is with the Chiefs; they need to protect the community. Can load it up and say we want to bring in toxic waste. If you want to talk about process come to KLCC meeting.

Comment: Where are the people? This is a bad law to start out with.

Question: Next step? Is it going back to the community again for a 3rd Reading?

Question: SECTION 2 - 14. SIGNS *"No signs, posters or advertisements of any kind shall be placed on the Mohawk Territory of Kahnawà:ke without the express written authorization of the Mohawk Council of Kahnawà:ke, which may order the removal of such objects at any time."*

What does this mean? All signs by Council have to be approved by Council?

Question: Who is responsible for enforcing the Law?

Statement: Individual

Statement: Not doing all of these things. Yes can be fined.

Question: amendments to old parts of the law?

Response: 1968 old law.

Statement: That's why we're making this law. Complaints have to be addressed through the Peacekeeper's.

Comment: PK's not doing their job.

Statement: Everybody's responsibility. If you see something suspicious, report it.

Wrap Up**Ron Skye**

“ACTIVITY” definition to include businesses & other sections. Recommendations back to Council. Then **possibly** back out for another 30-day Review and to a Third Reading.

Closing**Kahsennenhawe Sky-Deer**

Before the next Election, each Chief will review laws. It was asked that people be mindful that all laws would be going through a mandatory review process every five (5) years.