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**Auditor General
of Canada**
to the House of Commons

FALL

Chapter 6
Land Management and Environmental Protection
on Reserves



Office of the Auditor General of Canada

The Fall 2009 Report of the Auditor General of Canada comprises Matters of Special Importance—2009, Main Points—Chapters 1 to 8, Appendices, and eight chapters. The main table of contents for the Report is found at the end of this publication.

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Chapter

6

Land Management and
Environmental Protection on Reserves

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Land Management and Environmental Protection on Reserves

Main Points

What we examined

Land management refers to managing the use and development of land resources in a sustainable way. Land can be used for a range of purposes that interact and may compete with one another, making it desirable to plan and manage land use in an integrated way that provides for protecting the environment from negative impacts of economic development.

Until the early 1980s, all land management activities on First Nations reserves were the exclusive responsibility of the federal government. However, through comprehensive land claim settlements and self-government agreements, several First Nations have assumed full control and responsibility for the development of the reserve lands; some others have assumed responsibility under other arrangements for various aspects of land management on their reserves. The specific roles and responsibilities of the federal government vary depending on its agreement or arrangements with the First Nation.

We examined how Indian and Northern Affairs Canada (INAC) and Environment Canada have carried out the federal government's responsibilities for land management and environmental protection on reserves. This included looking at regulatory and non-regulatory measures used to manage the environment and the support INAC provides to those First Nations wishing to assume more land management responsibilities.

Audit work for this chapter was substantially completed on 29 May 2009.

Why it's important

Reserve lands are central to First Nations peoples' history, cultural identity, and day-to-day activities. Many First Nations are among the most economically deprived communities in the country. Their sustainable economic development depends on their access to and control over their land and natural resources and on a clean and healthy environment. Without the capacity and means to develop and use their lands and resources sustainably for their economic benefit, the opportunities for First Nations to improve their quality

of life and approach the standard of health and well-being enjoyed by other communities in Canada are severely restricted.

What we found

- Indian and Northern Affairs Canada and Environment Canada have identified a significant gap between First Nations reserves and Canadian communities elsewhere in the degree to which regulations protect the environment. While the federal government has the authority to regulate environmental threats on reserves, it has rarely used this authority to develop regulations to mitigate environmental threats that are regulated off reserves by provincial governments.
- INAC has done little to monitor and enforce compliance with existing regulations. For example, while regulations under the *Indian Act* require a permit issued by INAC to operate a landfill site or burn waste on reserve lands, the Department has issued few permits and is not equipped to conduct inspections, monitor compliance, and enforce the regulations. Consequently, garbage is often not confined to licensed landfill sites and there is no monitoring of the impacts on drinking water sources and air quality. Off reserves, provincial and municipal regulations and enforcement help to prevent such situations.
- Although INAC has developed legislative and program options to support First Nations who wish to assume partial or full control of land management on their reserves, most First Nations lands are still managed by the Department under the *Indian Act*. First Nations' access to alternative land management regimes established by INAC does not meet the demand. Consequently, INAC is unable to keep its commitment to transfer greater control of land management to First Nations who want it and are ready to take on these responsibilities. Furthermore, for First Nations under either of the alternative land management regimes, the Department provides insufficient training in comparison with the land management responsibilities it is transferring to them.
- Officials of both INAC and Environment Canada cited a lack of funding as a key reason for not meeting some of their commitments.

The departments have responded. The departments agree with all of our recommendations. Their detailed responses follow each recommendation throughout the chapter.

Introduction

6.1 Land management refers to managing the use and development of land resources in a sustainable way. Land can be used for a range of purposes that interact and may compete with one another. This makes it desirable to plan and manage land use in an integrated way that provides for protecting the environment from the negative impact of economic development. Historically, Indian and Northern Affairs Canada (INAC) has been responsible for administering the land management requirements of the *Indian Act* in response to requests by First Nations. It is still responsible for all land management activities for the majority of First Nations. The Department spent over \$135 million on managing reserve lands in the 2006–07 fiscal year.

6.2 According to INAC, Canada has 615 First Nations, with more than 80 percent of them consisting of fewer than 1,000 people living on reserves. First Nations people have higher unemployment rates and lower average incomes than other Canadians, particularly those living on reserves. Many First Nations view the development of reserve lands as their most viable means of generating wealth for their communities. Currently, 568 First Nations have land spread over more than 3,000 reserves, with a total area equivalent to about 60 percent that of Nova Scotia. Just over 160 reserves are urban; the remainder are rural and remote.

6.3 Fifty-six percent of First Nations members across Canada live in reserve communities; with some exceptions, these communities include homes, churches, administration buildings, and schools built on reserve land. In addition, some First Nations use portions of their land for economic development—for example, by leasing it to other parties or developing natural resources.

6.4 How these lands are managed, regulated, and protected is important to First Nations and to the well-being of their communities. With populations growing at a faster rate than Canada's population, these reserve lands will need to accommodate increasingly more homes, facilities, and infrastructure.

6.5 In communities off reserves, a series of municipal, provincial, and federal laws and regulations govern land use, occupancy, and development. However, for the most part, provincial and municipal laws and regulations related to land use do not apply to reserves. For most First Nations, the Chief and council can pass bylaws and develop community plans for their reserves, but the federal

government has the authority and responsibility to regulate use and to protect the environment of reserve lands.

6.6 Since 1876, the *Indian Act* has been the main instrument governing the use of First Nations lands. For a number of years, First Nations and others have raised concerns about how reserve lands have been managed under the Act.

Concerns about the management of reserve lands

6.7 The *Indian Act* has shaped how First Nations have been able to develop and profit from their reserve lands. The 1996 Royal Commission Report on Aboriginal Peoples and the 2007 report by the Senate Standing Committee on Aboriginal Peoples, *Sharing Canada's Prosperity—A Hand up, not a Handout*, both pointed to legislative and regulatory barriers and limited access to lands and resources as problems for First Nations' economic development. The Senate Committee report identified the *Indian Act* as one of the critical barriers to economic development on reserves. It also concluded that, under the *Indian Act*, market forces do not operate properly on Indian lands, which substantially raises the costs of doing business there.

6.8 Some of the Act's provisions that affect land management date back more than a century. Many First Nations have identified the following provisions as making economic development today a significant challenge for them:

- **Control of moneys.** *Indian Act* amendments in 1880 gave power to the federal government to decide how to spend revenue from the surrender and sale of reserve lands or other resources. First Nations must ask to use this revenue, which is held by the government in trust accounts, and specify how they intend to use it in each case. First Nations have noted that this inhibits those who wish to use these moneys to develop reserve lands.
- **Control of resources.** The written permission of the Minister of Indian and Northern Affairs is needed to remove minerals, timber, hay, and other resources from reserves. Title to resources on reserves does not lie with the First Nation, but with the Crown, for the benefit and use of the First Nation. A First Nations band Chief and council are thus not at liberty to enter into resource extraction agreements with industry without the willing, active, and timely participation of INAC.

- **Inability to use lands as collateral.** The *Indian Act* includes provisions that prohibit the seizure of property on reserve lands by outside interests, including banks and other would-be investors. Therefore, reserve lands cannot be used as collateral. This has significantly limited First Nations' ability to secure financing for investment in economic development activities on reserves.
- **Outdated regulatory environment.** The land management provisions of the *Indian Act* have not been significantly amended since 1951; they do not address economic development or environmental protection issues that, off reserves, are regulated by a combination of federal, provincial, and municipal institutions.

6.9 First Nations have also expressed concern that the processes that support land management under the *Indian Act* are cumbersome and slow. First Nations are governed by about 35 land-related sections of the *Indian Act*, including about 25 provisions that involve the Minister or Governor in Council in reserve land and resource management decisions. Depending on the type of land transaction, the process involves a First Nations band council resolution informing INAC of a proposed land use change, such as a new lease. A departmental lands officer works with the First Nation to complete the land transaction. Sometimes the First Nation's membership has to vote in a referendum on specific proposals. The lands officer reviews the proposal, ensuring that the change is consistent with any land use planning in place and that it conforms with pertinent environmental requirements. It must then be approved by the Minister and registered. First Nations and INAC officials have indicated that land management provisions of the *Indian Act* create impediments to the economic development of reserves because of the lack of timely decision making.

6.10 As well as fostering the economic well-being and prosperity of First Nations, one of INAC's primary objectives is to encourage sustainable management of First Nations lands and resources. INAC and Environment Canada both have responsibilities for protecting the environment on reserve lands, and the federal government is committed to providing the same standards of environmental protection that other Canadian communities have come to expect.

Focus of the audit

6.11 This audit focused on whether INAC and Environment Canada have met their responsibilities for land management on reserves, specifically with respect to transferring control of land management and providing essential environmental protection on reserve lands. We assessed whether INAC had developed legislation and regulations, programs, or policies that support First Nations' land management as alternatives to managing under the *Indian Act*. We also examined whether INAC and Environment Canada had provided essential protection of the environment on First Nations reserves, by developing and implementing legislative options, programs, and policies, and whether environmental protection measures on reserves were comparable with those off reserves.

6.12 We examined the legislative options, institutions, and programs developed since 2005, paying particular attention to the actions of departments over the past three years. We did not audit land activities related to 41 First Nations whose lands are managed through comprehensive land claims and self-government agreements.

6.13 More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

Transfer of control of land management

6.14 Given the concerns raised by First Nations, the 1996 Royal Commission on Aboriginal Peoples, the Senate Standing Committee on Aboriginal Peoples, and the Department's own assessments, we expected that Indian and Northern Affairs Canada (INAC) would develop alternative ways of dealing with land management issues to provide First Nations with greater control to address some of the economic development challenges particular to reserve lands. Specifically, we expected that, consistent with commitments in its reports on plans and priorities, INAC would have proposed legislative or regulatory measures, developed institutions, and put in place programs or other arrangements that would support management of reserve lands.

6.15 We reviewed legislative and program changes made over the past five years, obtained and assessed related documentation, interviewed department officials, and spoke with a number of First Nations representatives.

The Department developed legislative and program options to support First Nations' management of their lands

6.16 We found that the Department had worked with First Nations to develop and propose four legislative measures, which were subsequently enacted, and to develop four related financial institutions (Exhibit 6.1). All of these initiatives were aimed at providing First Nations with greater flexibility in managing land management activities and responding to concerns related to land management on reserves.

Exhibit 6.1 Recent legislative changes to provide for more flexible land management

Indian Oil and Gas Act (revised), May 2009

- **Purpose:** To update provisions that remained unchanged since 1974.
- **Key changes:** Allows regulation-making powers, an enforcement system comprised of fines and penalties, and environmental protection.
- **Intent:** To facilitate an oil and gas regime on reserves equivalent to those regimes off reserves.

First Nations Oil and Gas and Moneys Management Act, November 2005

- **Purpose:** To allow for First Nations control over oil and gas activities taking place on reserve lands and for the management of Indian moneys.
- **Key changes:** Allows oil and gas development and/or moneys management transfers to the First Nation.
- **Intent:** To provide for greater First Nations control over oil and gas development.

First Nations Commercial and Industrial Development Act, November 2005

- **Purpose:** To facilitate a regulatory regime for an on-reserve project that would mirror the regulatory regime off reserves.
- **Key changes:** Allows federal regulations to be developed for individual projects on reserves that would be equivalent to those off reserves.
- **Intent:** To remove any regulatory gaps between on-reserve and off-reserve development.

First Nations Fiscal and Statistical Management Act, March 2005

- **Purpose:** To allow First Nations to derive revenue from the collection of taxes from band lands. Assistance with regard to taxation, finances, and statistics collection will be carried out through four institutions.
- **Key changes:** Allows First Nations to create laws for the taxation of reserve land and to access institutions mandated to develop capacity.
- **Institutions created:**
 - First Nations Tax Commission assists in the development of property tax regimes on reserve.
 - First Nations Finance Authority (FNFA) issues bonds and raises long-term private capital.
 - First Nations Financial Management Board assesses, assists, and develops standards to allow First Nations to borrow from the FNFA.
 - First Nations Statistical Institute is mandated to provide statistical information on First Nations and build their statistical capacity.

6.17 These federal acts and institutions may enable First Nations to make more productive use of reserve land. To the extent that they are applied, these mechanisms could provide First Nations with access to capital and encourage more economic development activity on reserve lands.

6.18 However, these acts and institutions were implemented only over the last few years. Some of them are voluntary and are accessed by First Nations at their own pace, and therefore they have affected only a small number of First Nations to date. We did not audit their implementation or assess their efficacy. We note that while these options are not designed to address all of the concerns expressed, the Department has developed mechanisms to address significant issues.

6.19 In addition to the more recent legislative amendments and institutions that INAC has developed with First Nations, we examined various land management regimes developed by the Department. According to its Land Management Manual, INAC views the transfer of land management responsibilities to First Nations as part of an overall departmental approach to facilitating First Nations' control over their communities. It has committed to moving forward, in partnership with First Nations, from a relationship characterized by dependency to one in which First Nations assume greater jurisdiction, authority, and control over their lands, resources, and environment. We therefore expected to find options that would facilitate this transfer of control over land management to First Nations.

6.20 INAC has provided options since the early 1980s for First Nations who considered that the *Indian Act* regime of land management was not meeting their needs. The Regional Lands Administration Program (RLAP) was a co-management approach between INAC land managers and First Nations under the *Indian Act*. The Delegated Lands Management Program authorized First Nations to manage and deliver, on INAC's behalf, specific land management services required under the *Indian Act*. Both programs still operate, with 95 First Nations participating, but have been closed to any additional First Nations since 2004. Instead, the Department has developed two other options to enable First Nations to assume more land management responsibilities on their reserves.

6.21 The Department collaborated with First Nations to establish a Framework Agreement on First Nation Land Management in 1996, which led to the passing of the *First Nations Land Management Act* (FNLMA) in 1999. In 2005, the Department put in place the Reserve Land and Environment Management Program (RLEMP), a pilot

program intended to replace both the RLAP and the Delegated Lands Management Program. We examined both of these initiatives.

Land management alternatives do not provide enough access to First Nations who otherwise could participate

6.22 Reserve Land and Environment Management Program (RLEMP). The RLEMP is a pilot program that transfers from INAC to First Nations certain responsibilities under the *Indian Act*, such as community land use planning, environmental management, natural resources management, compliance monitoring, and administration of land transactions.

6.23 This program is open to First Nations that are currently operating under the RLAP or the Delegated Lands Management Program. To be eligible, a First Nation must have a land manager, at least one active registered land transaction, and a track record of good financial management.

6.24 Through training and delegation of authorities, this program is intended to build First Nations' land management capacity. It is also intended to accelerate the pace at which First Nations exercise greater control over their reserve land, resources, and environment, rather than having lands managed by the Department.

6.25 The program began as a pilot program in 2005 with 15 First Nations. According to information that the Department published at the time, it expected the program to be available to all First Nations by April 2006. We therefore expected that INAC would have expanded the program to include any First Nations who wanted to participate.

6.26 We found that access to the program was still limited to First Nations who were participating in either the RLAP or the Delegated Lands Management Program. Moreover, although some First Nations in these programs had indicated their interest in the RLEMP, the Department has not always admitted them. The process of entering the RLEMP is initiated by INAC when it invites a First Nation to send its land manager for RLEMP training. About 40 percent of First Nations under the two entry programs have moved into the RLEMP.

6.27 INAC has not provided access to the RLEMP for the majority of First Nations. Thus it is not giving many First Nations the opportunities that the program offers to build their land management capacity and expertise in order to better manage economic development and environmental protection on their reserves.

Land code—A code that sets out the basic provisions governing the exercise of a First Nation's rights and powers over its reserve lands. It can include procedures for mortgage provisions, seizure of leasehold interests, dispute resolution mechanisms, and making and publishing First Nation laws.

6.28 First Nations Land Management Act. The *First Nations Land Management Act* (FNLMA) was developed to provide First Nations with greater flexibility in the areas of land, resource, and environmental management. It stems from the 1996 Framework Agreement on First Nation Land Management between 14 First Nations and the Minister of Indian Affairs and Northern Development. The FNLMA effectively removes First Nations who choose this option from the land management provisions of the *Indian Act*. It enables them to adopt a **land code** and assume management over their reserve lands and associated revenues. It also provides First Nations with the law-making authority over environmental protection. Upon becoming operational under the FNLMA, a First Nation may not return to being governed under the land management provisions of the *Indian Act*.

6.29 The FNLMA is open to First Nations who are operating under any of the existing land management regimes. The Framework Agreement on First Nation Land Management established a First Nations Lands Advisory Board consisting of representatives from First Nations operating within the regime. Once an interested First Nation applies, both INAC and the Board assess the First Nation's preparedness to enter into this regime. The Department's regional office considers the First Nation's financial management status, any litigation involving reserve lands, the band's election cycle status, and any environmental concerns and land interest issues.

6.30 First Nations under the FNLMA may give their own consent for land transactions. This provision of the Act aims to enable First Nations to make timely business and administrative decisions and to accelerate their progress in economic development, resource management, and land use planning. Once a First Nation is fully operational in all provisions of the FNLMA, INAC's role in managing the First Nation's land activities is limited to maintaining the agreed-upon funding and registering land transactions as well as providing some technical support.

6.31 For most First Nations, the FNLMA regime is, in effect, the only alternative to land management under the *Indian Act*. Thus, in light of INAC's commitment to work with interested First Nations to enable them to assume control over their lands, resources, and environment, we expected that the Department would have accepted First Nations who were interested and ready into the FNLMA regime.

6.32 When developing the programming for the FNLMA, the Department anticipated that about 90 First Nations could become

fully operational in all provisions of the Act. In 2002, its plans called for having 30 First Nations in the developmental phase of the FNLMA regime at any given time. The Department anticipated that up to 75 First Nations would be operational by the end of 2007. At the time of our audit, only 22 First Nations were operational, 19 were in the developmental stage, 2 had negotiated self-government agreements, and 9 were inactive. Another 61 First Nations were waiting to enter the FNLMA, most of whom were still waiting to be assessed by the Department to determine whether they were ready to enter the FNLMA regime. At the end of 2008, 15 of these 61 First Nations had been waiting for more than seven years.

6.33 The wait to enter the FNLMA regime could impede economic development for First Nations who want to obtain control over their land management. Carrying out complicated commercial transactions is difficult for First Nations under the *Indian Act*, due to the administrative delays caused by the required approvals and procedures. In addition, several sources indicate that private sector investors appreciate the certainty that comes from dealing directly with First Nations under the FNLMA, knowing that the First Nation, not INAC, holds the legal authority to make decisions. Until the Department can make the FNLMA or RLEMP accessible to First Nations who want to enter those regimes, it does not have the means for meeting its commitment to transfer greater control of land management to First Nations.

6.34 Recommendation. Indian and Northern Affairs Canada should ensure that First Nations who are ready and who want greater autonomy over their land management can access either the Reserve Land and Environment Management Program or the *First Nations Land Management Act* regime.

The Department's response. Agreed. The Reserve Land and Environment Management Program (RLEMP) began as a pilot program in 2005 and has been funded internally since its inception. Existing authorities were used to allow for a pilot of the RLEMP, limited to First Nations participating in existing programs.

Since 1996, a number of First Nations have sought access to the *First Nations Land Management Act* (FNLMA) regime. In 2002, an amendment to the Framework Agreement on First Nation Land Management was made to allow up to 30 First Nations in the developmental phase of the FNLMA regime at any given time.

In March 2008, INAC had to close the FNLMA regime to new entrants due to a lack of funding. The Department is currently seeking

additional resources to effectively implement the FNLMA regime for participants and expand it to new First Nations.

In summer 2009, a sustainable funding source for the RLEMP was secured through the Aboriginal Economic Development Action Plan. With dedicated funding over four years, INAC will now be able to fully implement this program and allow up to 20 new First Nations per year to enter the RLEMP.

Current options for delegated land management have not included sufficient training and capacity building

6.35 When First Nations enter into a land management regime that provides them with greater responsibility for processing land transactions, they take over some of the land management activities that would otherwise have to be carried out by INAC. To carry out these responsibilities effectively, appropriate training for First Nations staff is essential.

6.36 One of the priorities in the Department's program activity architecture is to build First Nations' capacity for land management. The Department has also made specific commitments to facilitate training for First Nations in the RLEMP, although not for First Nations in the FNLMA regime. While the First Nations Land Advisory Board has responsibilities to develop curricula and training under the FNLMA, we expected that INAC would have met its broad commitment to develop the capacity of First Nations taking on increased responsibilities, by ensuring that they are provided with appropriate training. We also expected that the Department would have met its specific commitments to provide training for First Nations under the RLEMP.

6.37 We looked at the training available to First Nations participating in the RLEMP and the FNLMA regime. We examined documentation on training curricula, training completed, and training availability. We interviewed officials of the Department, a First Nation organization, and a facility that provides RLEMP training.

6.38 Reserve Land and Environment Management Program (RLEMP). One of the objectives of the RLEMP is to prepare First Nations for their roles and responsibilities through a training and certification program. First Nations land managers become certified when they successfully complete the RLEMP training program. This training program takes place over two years, with the land managers

participating in one- and two-week intensive classroom training sessions, followed by several weeks of home study to be completed while working in their communities.

6.39 As soon as a First Nation member is registered for training, the First Nation is considered to be in the training and development phase of the RLEMP. The First Nation becomes fully operational when its land manager completes a two-year training program. We found that of the 67 First Nations in the program at the end of our audit, only 28 had certified land managers; the land managers in the other 39 were receiving training. This means that more than half of the First Nations with RLEMP responsibilities do not yet have fully trained land managers.

6.40 While INAC covers all costs associated with the two-year RLEMP training program and certification, it plans to pay training costs for only one person per First Nation, with additional spots available for First Nations who want to cover the cost of training themselves. However, First Nations have expressed concern that training only one person per First Nation could have serious consequences. Staff turnover or unavailability of trained land managers for other reasons could result in First Nations being unable to carry out their land management responsibilities.

6.41 We also found that training was sometimes arranged on short notice. To commit to the first year of the training, the land manager must participate in three two-week sessions away from the community and another 28 weeks of home study while working within the community. For example, for first-year training scheduled to begin in April 2008, it was not until that month that the Department confirmed enrolment decisions and funding to the participants and the training facility. Late approvals mean participants have very little time to make arrangements for leaving their work and home responsibilities throughout the coming year. As a result, some First Nations staff were unable to take the training. Of the 30 participants offered entry to the program annually by the Department, only 23 started the training in 2008 and 16 in 2009. We observed that an INAC evaluation of the RLEMP pilot project in 2007 noted delays in approvals and funding.

6.42 *First Nations Land Management Act (FNLMA) regime.* First Nations under the FNLMA are responsible for developing a land code, processing all their land transactions, working with INAC and Environment Canada to establish an Environmental Management Agreement, and passing their own environmental laws and regulations

related to land management. These responsibilities are more extensive than those assumed by First Nations under the RLEMP.

6.43 The development of training was to be addressed through an annual funding arrangement with the First Nations Land Advisory Board (FNLAB). INAC has a funding arrangement that provides them about \$3.5 million annually to, among other things, develop model land codes, laws, and management systems and to assist other First Nations seeking to become operational within the FNLMA regime.

6.44 An additional element in this funding arrangement is the development of a training strategy. In the past, INAC has provided funding to the FNLAB specifically to develop curricula and training programs. In 2005, the Department discontinued this funding. Since then, the Department has offered priority for RLEMP training to selected First Nations under the FNLMA.

6.45 At present, land management training is not mandatory for First Nations under the FNLMA. Of the 52 First Nations in this regime, 10 had a land manager who had either registered for RLEMP training or was already certified at the time of our audit. Another 10 First Nations had started training but not completed it.

6.46 The training developed for the RLEMP does not address all the responsibilities specific to the FNLMA. Without adequate training, those First Nations under the FNLMA may be unable to develop the necessary capacity but will still have full responsibility and liability for land management and environmental protection.

6.47 Recommendation. Indian and Northern Affairs Canada, in collaboration with First Nations, should seek to ensure that an appropriate training program is developed for First Nations in the *First Nations Land Management Act* regime. The Department should also ensure that appropriate training is made available to First Nations in either the Reserve Land and Environment Management Program or the FNLMA regime. This training should address the requirements under each of the respective regimes.

The Department's response. Agreed. The Reserve Land and Environment Management Program (RLEMP) has provided the only professional land management training available to First Nations for the past four years. Program evaluations and reviews of the RLEMP training program have concluded that the design and delivery of the training program are sound, credible, relevant and responsive to the needs of First Nations land managers and their communities.

From 1999 to 2005, Indian and Northern Affairs Canada (INAC) provided funding to the First Nations Land Management Resource Centre to develop a training strategy and curricula that would address the specific capacity requirements of First Nations Land Management First Nations. In 2005, INAC discontinued this funding due to a lack of progress. While the RLEMP training was designed for First Nations managing lands under the *Indian Act*, the Department decided to offer that training on a priority basis to First Nations Land Management First Nations as a temporary measure.

A renewed effort by the Resource Centre to develop training and curricula specific to First Nations Land Management is currently being undertaken and INAC anticipates receiving a proposal to that effect in 2009–2010.

The RLEMP pilot project has been funded internally since its inception in 2005. The necessary sources of funds have not always been identified or available at the beginning of each fiscal year. As a result, there has been a delay in confirming whether the RLEMP training program could be offered in a given year and in notifying students of their acceptance into the training program.

As mentioned previously, a sustainable funding source for the RLEMP was secured in spring 2009 through the Aboriginal Economic Development Action Plan. With dedicated funding for this program over four years, INAC will now be able to engage in the appropriate planning and forecasting required to notify new students slated to participate in the RLEMP training program much sooner than before.

Environmental protection

Fewer regulations protect the environment on reserves than off reserves

6.48 An important part of land management is protecting the environment from adverse effects of economic and residential development and mitigating any risks to human health and safety. Indian and Northern Affairs Canada and Environment Canada have both expressed their commitment to promoting sustainable development on reserve lands. The use and development of land off reserves is generally subject to a wide range of provincial and municipal laws, regulations, and zoning codes, many of which are aimed at protecting the environment.

6.49 In Canada, provincial, territorial, and municipal government laws and regulations provide measures to control a vast array of potential environmental threats. However, provincial and municipal laws and regulations generally do not apply on reserves and cannot be

enforced there. The federal government is responsible for all regulation of environmental protection on First Nations reserves that are managed under the *Indian Act*. It has power and authority under the *Indian Act*, the *Canadian Environmental Assessment Act*, the *Canadian Environmental Protection Act, 1999*, and the *Fisheries Act* to protect the reserve lands and foster their sustainable use. It also has other management tools, such as policies and programs, to promote environmental protection.

6.50 In 1996, the parties who signed the Framework Agreement on First Nation Land Management identified four significant environmental threats: solid waste, sewage, fuel storage tanks, and environmental emergencies. In a 2007 study, Environment Canada also identified significant risks on reserves that required priority attention, including landfill, solid waste, and hazardous waste; discharge to surface water; and air emissions from incineration and open burning of garbage.

6.51 Given the importance of these environmental threats to First Nations, and Environment Canada's recognition of environmental risks, we expected that INAC and Environment Canada would have given priority attention to these matters and would have developed, monitored, and enforced regulations and taken other measures to address each issue.

6.52 We compared the extent to which regulations applicable to reserves in the four priority areas identified by the parties were consistent with regulations that exist off reserves. Specifically, we compared regulations from selected legislation in Ontario with those from key legislation in place that address the same risks on reserves. We found that many of these priority environmental threats are not regulated on reserves (Exhibit 6.2).

6.53 In several studies and evaluations since 2005, Environment Canada has confirmed the existence of a gap in environmental regulations on reserves. INAC has also recognized the existence of a regulatory gap. The *First Nations Commercial and Industrial Development Act* includes the power to pass regulations that mirror those of the province in which the reserve is located; however, to date, it has only been used to develop regulations for one industry sector on one reserve.

Exhibit 6.2 Regulatory provisions of selected environmental threats—comparison of regulations in place in the province of Ontario and on First Nations reserves

	Ontario	On Reserves
Solid waste		
Waste disposal		
• waste can only be deposited in an approved waste disposal site	●	●
Landfill sites		
• permit or certificate required to establish and operate	●	●
• standards for locating, operating, and maintaining landfill sites	●	● ¹
• cannot use land previously used for landfill for 25 years (unless approved by the Minister)	●	○
Waste processing or recycling		
• permit required to establish and operate	●	○
Hazardous waste		
• certain wastes designated as hazardous wastes	●	○
• hazardous waste tracked from cradle to grave (from generator to carrier and to receiver)	●	○
• restrictions on land disposal of untreated hazardous wastes	●	○
Sewage and other wastewater discharges		
Discharges/releases of pollutants into water		
• general prohibition on releases into water	●	●
Septic systems		
Small systems (e.g. to serve a residence)		
• minimum standards for design and installation; permits and inspections required	●	○
Large and communal systems		
• can only be constructed and operated if covered by an approval/permit	●	○
Municipal/community wastewater treatment facilities		
• can only be operated if covered by an approval/permit	●	○ ²
• discharges must be in accordance with permit requirements (discharge limits, etc.)	●	○
• facility operators must be licensed	●	○
Industrial/commercial facilities that discharge into water		
• can only be operated if covered by an approval/permit	●	○ ²
• discharges must be in accordance with permit requirements (discharge limits, etc.)	●	○ ³
• discharge standards for persistent toxics for certain industrial sectors	● ⁴	● ⁵

Exhibit 6.2 Regulatory provisions of selected environmental threats—comparison of regulations in place in the province of Ontario and on First Nations reserves (continued)

	Ontario	On Reserves
Fuel storage		
Underground and above-ground storage tanks		
<ul style="list-style-type: none"> design and performance standards and requirements related to installation, leak detection, upgrades, registration, operation, and maintenance 	●	● ⁶
Propane facilities		
<ul style="list-style-type: none"> National Propane Storage and Handling Code adopted 	●	○
Environmental emergencies		
Spills of pollutants and spill response (general)		
In the event of a spill of a pollutant, persons involved in spill must		
<ul style="list-style-type: none"> report the spill to environmental authorities, the local municipality, and others 	● ⁷	● ⁸
<ul style="list-style-type: none"> clean up the spill and restore the natural environment 	● ⁷	● ⁸
Designated “dangerous goods”: accidental releases during transport		
<ul style="list-style-type: none"> immediate reporting to provincial authorities and others 	●	●

- environmental risk addressed through regulations
- environmental risk not addressed through regulations

Explanatory notes

- Risk is addressed through permits (see paragraph 6.58).
- Conditions may be imposed under funding agreements and the *Canadian Environmental Assessment Act*.
- Fisheries Act* regulates discharges from some industry sectors.
- Regulations apply to nine industry sectors.
- Regulations apply to two industry sectors.
- Regulations do not apply to above-ground tank systems for heating or emergency power (2500L or less overall capacity).
- Regulations are for pollutants generally.
- Regulations are for specified hazardous or flammable substances.

Source: Ontario laws and regulations and federal laws and regulations

Existing regulations and other measures do not protect First Nations from priority environmental threats

6.54 In 2002, INAC developed an Environmental Stewardship Strategy to protect the health and safety of First Nations and Inuit peoples, address the environmental regulatory gap, and reduce the risk of contamination as well as the Department's potential financial liability. This strategy included both short- and long- term action items to develop and implement policies, directives, operational guidelines, standards, and other management tools. Under the strategy, the Department identified commitments and goals related to waste management, contaminated sites, and fuel storage tank management. In 2007, the Department developed a framework for implementing the strategy and monitoring progress. This framework included performance objectives, indicators, and targets.

6.55 We therefore expected that the Department, in conjunction with Environment Canada, would have taken steps to fill the regulatory gap in order to protect reserve lands from environmental risks associated with land use. We also expected that INAC would have made progress toward its identified objectives. We reviewed INAC's assessment of its progress.

6.56 We examined existing regulations and measures in place as well as actions taken by INAC, under its Environmental Stewardship Strategy, and by Environment Canada to address environmental threats identified as priorities to First Nations. We also reviewed the environmental regulations that currently apply on reserve lands for these priority areas. We looked at how the regulations are applied along with other measures taken to manage risks on First Nations reserves in British Columbia, Saskatchewan, and Ontario, the provinces with the greatest number of registered land transactions over the past three years.

6.57 We found that the Department had implemented most of the short-term action items in its Environmental Stewardship Strategy, such as developing an overall policy to guide the integration of environmental management practices. However, the Department's performance report of its framework for implementing the Strategy identified many other action items that had not been fully carried out or that had been delayed. For example, the Department had planned to develop a policy specific to waste management by March 2008 and to develop service standards for waste management thereafter. By the end of our audit, the Department had developed only a draft policy and had not developed any standards.

6.58 Solid waste management. Under the 1978 *Indian Reserve Waste Disposal Regulations*, no person shall operate a garbage dump or use any land to dispose of, burn, or store waste without a permit that specifies terms and conditions for operating a landfill as well as environmental protection requirements. Permit holders are subject to an inspection before a permit will be renewed. INAC is responsible for issuing permits and enforcing these regulations.

6.59 According to information provided by INAC, there are about 365 First Nations in British Columbia, Saskatchewan, and Ontario whose land is managed by the *Indian Act*. About 150 of these First Nations have service agreements with municipalities to manage their solid waste. We expected that INAC would have issued at least one landfill permit for each of the remaining First Nations. We found that only 14 permits had been issued (all in Saskatchewan) under the *Indian Reserve Waste Disposal Regulations*. This means that about 200 First Nations in these three provinces should have had permits but did not.

6.60 The Department has provided funding for the construction, operation, and maintenance of waste management facilities in about 120 First Nations. It therefore had some information on waste management facilities in these communities but had no information on how solid wastes are disposed of in about 80 First Nations.

6.61 Although INAC has the information to help it identify which First Nations do not have municipal service agreements or waste disposal permits, we found that the Department neither promotes nor conducts significant surveillance on reserves to look for illegal dump sites or garbage burning and is not equipped to monitor compliance, conduct inspections, or enforce the regulations.

6.62 INAC officials explained that they do not issue permits or conduct surveillance, in part because the regulations are out-of-date and do not reflect the complexity of modern waste management systems. In addition, the Department considers penalties for non-compliance to be ineffectual (dumping or burning garbage without a permit in a residential community can result in a fine of not more than \$100 or a three-month jail sentence, or both). In contrast, if the same activities jeopardize fish habitat, they can bring fines of up to \$300,000 and/or a prison term of a maximum of six months under the *Fisheries Act*.

6.63 Aside from requirements in the 14 landfill permits issued to First Nations, INAC has not developed any minimum regulatory or other standards for locating, operating, and maintaining landfill sites.

For example, such standards could include minimum distance from a body of water or a residential community. Provincial regulations include such standards, which apply off reserves.

6.64 Sewage and other wastewater discharges. Environment Canada identified the discharge of household sewage and industrial and commercial wastewater into surface water as a significant risk on reserves. Like solid waste, liquid waste falls under the *Indian Reserve Waste Disposal Regulations*. Nevertheless, this is an area where the regulatory gap on reserves is particularly pronounced compared with the province of Ontario. Legislation and regulations in Ontario control sewage and other wastewater entry into groundwater and surface waters through approvals, permits, and other requirements. They cover, among other things, household septic systems and municipal sewage treatment plants. On reserves, there are no comparable regulations or standards in place. Moreover, we found that INAC does not issue permits for sewage treatment and disposal and makes no other effort to apply the existing regulations.

6.65 INAC and Health Canada have taken some actions to address sewage treatment and disposal. These departments, working with First Nations, developed the national First Nations Water Management Strategy. After a national assessment of the water and wastewater systems on reserves in May 2003, INAC announced the First Nations Water and Wastewater Action Plan in 2008. It also launched an initiative in 2009 to develop a legislative framework for drinking water and wastewater in First Nations communities. Public consultation on this initiative began in February 2009.

6.66 The *Fisheries Act* includes general provisions that apply throughout Canada and prohibits the release of deleterious substances, including sewage from reserves, into waters frequented by fish. Environment Canada is currently developing new Canada-wide regulations, under the *Fisheries Act*, to mitigate contaminants from community wastewater treatment facilities. These regulations are being developed in conjunction with provincial and territorial governments, with a view to phasing in regulations for all wastewater systems across the country over the next 30 years. Environment Canada expects that these regulations will be published in the *Canada Gazette* by the end of 2010. Environment Canada has indicated that wastewater systems that pose the greatest risk to the environment would have to comply with the new regulatory standards 10 years after the regulations come into effect.

6.67 Fuel storage tanks. In 2008, the government promulgated the *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations* under the *Canadian Environmental Protection Act, 1999*. These regulations, scheduled to be fully implemented by June 2012, establish standards for fuel storage tanks and require contingency plans to be in place for environmental emergencies. Under the regulations, fuel storage tanks must be registered by June 2010. Environment Canada, with INAC's participation, provides information on these regulations on its website and in workshops delivered on reserves.

6.68 In anticipation of these regulations, in 2006 INAC began carrying out an assessment of fuel storage tanks on reserves using funds for assessments of contaminated sites. As of February 2009, it had completed an inventory of 90 percent of fuel storage tanks in British Columbia and 30 percent of tanks in Ontario. In Saskatchewan, the Department had carried out an inventory of 191 fuel storage tanks, focusing only on tanks over 4,000 litres. Later that year, the Department concluded that storage tanks on reserves are not the property of the federal government and therefore the regulations did not require that INAC complete an inventory and register fuel storage tanks on reserves. The Department continued to carry out an inventory of fuel storage tanks in British Columbia and Ontario but stopped collecting information on fuel storage tanks in Saskatchewan.

6.69 Environmental emergencies. Another area considered essential for environmental protection is the need to address environmental emergencies. Several provinces, including Ontario, have legal provisions to address environmental emergencies such as spills. For example, in the event of a pesticide spill, a spill report and cleanup would be required. However, such provincial requirements, which apply to spills of pollutants generally, do not apply on reserves.

6.70 Under the *Environmental Emergency Regulations* of the *Canadian Environmental Protection Act, 1999*, reporting and other remedial actions are required in the event of an accidental release of specified harmful substances. These provisions apply throughout Canada, including on reserve lands.

6.71 As an additional means of mitigating risk, INAC has signed agreements with some provinces to coordinate planned actions in the event of environmental emergencies.

6.72 Closing the gap. The environmental regulatory gap is particularly significant for First Nations that enter into the *First Nations Land Management Act* regime. In entering into this regime, a

First Nation becomes responsible for closing identified gaps in environmental regulations on its reserve. While federal laws will continue to apply on reserves under the FNLMA, the First Nation must develop environmental protection standards and punishments that have at least the same effect as the laws in the province in which it is located. This could mean that the First Nation must develop and implement regulations where the federal government has yet to do so.

6.73 To develop such regulations, INAC, in conjunction with the First Nation and Environment Canada, must first develop and sign an environmental management agreement. Although some work has begun, no such agreements had been completed by the end of our audit; therefore, none of the 22 First Nations with land codes had developed any environmental regulations. Although First Nations with land codes assume increased responsibilities for environmental management on reserves, without an environmental management agreement they may not have the means and capacity to meet these additional responsibilities.

6.74 The federal government has the authority to regulate environmental threats on reserves. Environment Canada has conducted 50 inspections on reserves in the last three years related to regulations under the *Canadian Environmental Protection Act, 1999*, and the *Fisheries Act*. INAC informed us that it was not systematically conducting inspections related to the *Indian Reserve Waste Disposal Regulations* under the *Indian Act*. Both departments have also left some other environmental threats unregulated. Passing these responsibilities to First Nations under the FNLMA may not address the risks. This leaves many communities on reserves exposed to conditions that other communities are protected from by regulation and enforcement.

6.75 Recommendation. Indian and Northern Affairs Canada and Environment Canada should work together, in partnership with First Nations, to develop and implement a strategy to identify and address residual environmental regulatory gaps on reserves, as required.

The departments' response. Agreed. Indian and Northern Affairs Canada and Environment Canada will work together, and in partnership with First Nations, to develop a strategy to identify and close residual regulatory environmental gaps on reserves. However, some of these gaps will require legislative changes.

Non-regulatory management measures have not worked as planned

6.76 Aside from regulations, INAC and Environment Canada have other means of managing environmental threats. We assessed two means that INAC uses to address environmental threats on reserves.

6.77 Environmental provisions in leases to address regulatory gaps. Over half of First Nations with reserves remain subject to all the land management provisions of the *Indian Act*. For these First Nations, INAC retains full control and responsibility for fulfilling the requirements of the *Indian Act*, such as leasing land for commercial developments like hotels, gas stations, and stores. For new leases, the Department's land management manual commits the Department to ensuring that the condition of the land is evaluated and, if required by law, that an environmental assessment is completed.

6.78 To determine whether INAC had met these requirements, we looked at a representative sample of 51 of the 936 leases on reserve lands in British Columbia, Saskatchewan, and Ontario that were processed under the *Indian Act* over the past three years.

6.79 We found that in 60 percent of our sample, the Department did not obtain the required environmental information prior to signing or renewing leases. It therefore might have signed leases with parties without having completed the proper environmental reviews.

6.80 A standard provision we found in leases states that lessees must respect all applicable environmental laws, including those of provincial governments. Since provincial land management laws do not apply to reserves and there are few federal regulations governing environmental protection on reserves, it is questionable whether a lease clause requiring compliance with applicable environmental regulations provides any increased protection for the environment or human health.

6.81 Contaminated site liabilities. As of April 2008, INAC had identified 1,610 contaminated sites on reserves, mostly related to abandoned dumps and fuel spills. Of these, 557 had been classified as high-risk or medium-risk sites and therefore priority sites for cleanup or risk management. Moreover, the number of identified contaminated sites requiring investigation and possible cleanup has been increasing, as INAC continues to add suspected sites to its list. Between April 2008 and April 2009, the Department identified over 270 more suspected contaminated sites on reserves. Its financial liability for contaminated sites on reserves was projected at about \$143 million as of April 2009, up from \$98 million in April 2008.

6.82 The federal government has a \$3.5 billion cost-shared program to help federal departments address contaminated sites under their responsibility if the contamination occurred before April 1998. The government's objectives are to reduce environmental and human health risks and to eliminate liabilities from these sites by 2020. In the 2008–09 fiscal year, the Department used \$10.8 million from this fund to clean up or manage risks of 58 on-reserve sites. The Department has been identifying additional contaminated sites on reserves more quickly than it has been addressing them.

6.83 A 2008 evaluation by INAC of its contaminated sites program concluded that the Department will not meet the federal government's 2020 target to eliminate known liability related to sites that became contaminated prior to 1998. According to the evaluation, none of the confirmed high-risk or medium-risk sites on reserves had been fully remediated and no actions had been taken for two thirds of these sites to mitigate the potential risks to health and the environment. The INAC evaluation also raised concerns about the lack of regulatory and enforcement tools to stop the creation of additional contaminated sites on reserves.

6.84 Recommendation. Indian and Northern Affairs Canada should develop and implement a plan to remediate, by 2020, high-risk and medium-risk sites on reserves that became contaminated prior to 1998, as the federal government has committed to doing.

The Department's response. Agreed. The Indian and Inuit Affairs Contaminated Sites Management Program of Indian and Northern Affairs Canada will continue to work with First Nation communities to assess suspected and known contaminated sites, with the goal of reducing risks to human health and the environment and reducing departmental liabilities.

The Contaminated Sites Management Program is currently on target to meet the 2020 deadline by maintaining an annual 15 percent reduction in the departmental liability related to known contaminated sites. As the program does not have dedicated program funds and has in the past been supported in part through internal reallocation, success in meeting 2020 targets will depend primarily on future levels of funding for the Federal Contaminated Sites Action Plan.

Funding constraints**Insufficient funding has been committed to meet program requirements**

6.85 Throughout our audit, we found several instances where the federal government had not met its commitments and obligations. The reasons cited by department officials often related to the lack of an identified source of funding to meet commitments.

6.86 Reserve Land and Environment Management Program (RLEMP). We found that this initiative was not available to the majority of First Nations and that training was limited to one individual for each First Nation accepted into the program. Department officials explained that the RLEMP is still a pilot program and is not more widely available to First Nations due to a lack of funding. Department officials also noted that the pilot program is due to expire on 31 March 2010. At the end of our audit, Indian and Northern Affairs Canada was seeking new funding to make the program more widely available.

6.87 First Nations Land Management Act (FNLMA). The FNLMA was proposed with a funding envelope of more than \$100 million over its first five years. Department officials explained that they had been reallocating about \$16 million per year from other approved programs but this had been insufficient to address all of the Department's responsibilities under this regime. Department officials told us that until dedicated funds are made available, the Department is no longer accepting additional First Nations into the FNLMA regime.

6.88 Environmental management on reserves. We found that gaps remain both in the regulations that apply on reserves compared with those off reserves and in the implementation of environmental management actions. INAC officials cited the lack of capacity and resources as among the main inhibitors to enforcing the *Indian Reserve Waste Disposal Regulations* and implementing the Department's Environmental Stewardship Strategy.

6.89 To work with First Nations under the FNLMA, Environment Canada and INAC signed a five-year memorandum of understanding (MOU) that identified roles and responsibilities for each department to develop environmental management agreements with First Nations that have a land code. Environment Canada has completed some activities under the MOU but withdrew from further participation after less than two years, evoking a provision under the MOU that allows them to withdraw if the required resources have not been secured.

6.90 Recommendation. Indian and Northern Affairs Canada and Environment Canada should each assess the funding requirements necessary to fulfill their land management responsibilities on reserves and meet their commitments. Each department should also identify how it will finance these responsibilities.

Indian and Northern Affairs Canada's response. Agreed.

The Department is regularly assessing its funding requirements to fulfill land management responsibilities on reserves. To fully implement the *First Nations Land Management Act* regime for current participants and to expand it to a significant number of new participants, the Department would require additional funding in future years.

Environment Canada's response. Agreed. The Department is assessing funding requirements for negotiating environmental management agreements under the *First Nations Land Management Act*, and options to address these requirements will be explored. Funding for other land management responsibilities will be assessed as part of the normal annual planning and priority-setting conducted by the Department.

Conclusion

6.91 Indian and Northern Affairs Canada (INAC) has developed legislative and program measures to support key elements of land management on reserves. It has provided greater control to First Nations to enable them to address economic development challenges on reserve lands.

6.92 The *First Nations Land Management Act* (FNLMA) is intended to enable First Nations to make timely business and administrative decisions and to accelerate their progress in economic development, resources management, and land use planning. However, less than a quarter of the First Nations who were expected to take advantage of FNLMA programming have been able to do so. INAC has been unable to fund the full implementation of this program.

6.93 INAC and Environment Canada have not addressed significant gaps in the regulatory framework that protects reserve lands from environmental threats. Provincial and municipal environmental regulations and zoning laws that protect communities off reserves do not apply to reserve lands.

6.94 INAC has not met key responsibilities for implementing existing regulations to provide essential environmental protection on First

Nations reserves. While regulations exist under the *Indian Act* to cover solid waste management, most landfill sites on reserves operate without permits, monitoring, or enforcement by INAC. Similarly, while these same regulations apply to liquid waste, INAC does not issue permits or monitor and enforce compliance with the regulations for sewage treatment and disposal.

6.95 INAC and Environment Canada have not established a regulatory regime that protects the environment of First Nations reserves and that is comparable to the regime provided by provincial laws. They have not filled the regulatory void that occurs when provincial laws governing land management do not apply on reserves; nor have they adequately managed the environmental threats that this void creates.

About the Audit

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

Objectives

The objectives of the audit were to determine whether Indian and Northern Affairs Canada (INAC) and Environment Canada

- developed legislative options, programs, and policies in support of First Nations land management and environmental protection; and
- met key responsibilities for implementing federal acts, regulations, programs, and/or policies in support of First Nations land management and provided essential environmental protection of First Nations reserves.

Scope and approach

The entities included in this audit are INAC and Environment Canada—primarily, the Lands and Economic Development Sector of INAC and the Environmental Stewardship Branch of Environment Canada. We obtained and assessed related documentation and interviewed department officials and land managers in the regional offices.

While First Nations were not subject to audit, we visited selected First Nations and First Nations organizations to obtain their perspectives on land management. First Nations with self-governance agreements and comprehensive land claim agreements were not included in this audit.

We reviewed the three main land management regimes accessible to First Nations: The *Indian Act*, the Reserve Land and Environment Management Program, and the *First Nations Land Management Act*.

We selected three regions in which to conduct our regional audit work: British Columbia, Saskatchewan, and Ontario. These regions had the greatest number of registered land transactions over the past three years.

Environmental management regulatory gaps on reserves cover a broad spectrum. The audit focused on areas identified as essential for First Nations in the Framework Agreement on First Nation Land Management: solid waste management, fuel storage tank management, sewage treatment and disposal, and environmental emergencies. It also focused on the legislation of the federal and Ontario governments most closely related to regulating environmental threats.

For Exhibit 6.2, we examined Ontario regulations related to the province's *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Technical Standards and Safety Act*, the *Building Code Act*, and the *Dangerous Goods Transportation Act*. We compared the regulatory coverage these provided with regulations applicable to reserves from the federal *Indian Act*, *Canadian Environmental Protection Act, 1999*, the

Fisheries Act, the *Transportation of Dangerous Goods Act*, and the *Indian Oil and Gas Act*. Regulations from most of these federal acts are equally applicable on and off reserves.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
We expected that Indian and Northern Affairs Canada (INAC) would have developed legislative options, programs, and policies to support the management of First Nations lands.	<ul style="list-style-type: none"> • <i>Constitution Act, 1982</i>, section 91(24) • <i>Department of Indian Affairs and Northern Development Act</i>, section 4(a) • Indian and Northern Affairs Canada’s mandate (INAC website) • 2009–2010 Indian and Northern Affairs Canada, Program Activity Architecture: Strategic Outcomes—The Land
We expected that INAC would have developed legislative options, programs, and policies to transfer control over land management to First Nations who request it.	<ul style="list-style-type: none"> • <i>Constitution Act, 1982</i>, section 91(24) • <i>Department of Indian Affairs and Northern Development Act</i>, section 4 • <i>Indian Act</i>, section 53(1) • INAC Land Management Manual, Chapter 11 • INAC Report on Plans and Priorities 2006–07
We expected that INAC and Environment Canada would have developed legislative options, programs, and policies related to solid waste management, fuel storage tank management, sewage treatment and disposal, and environmental emergencies comparable with those off reserves.	<ul style="list-style-type: none"> • <i>Canadian Environmental Assessment Act</i>, section 4(1)(c) • <i>Canadian Environmental Protection Act, 1999</i>, Part 9 • INAC’s Sustainable Development Strategy 2004–2006 • INAC’s Environmental Stewardship Strategy • INAC’s Program Activity Architecture
We expected that INAC would have met its key responsibilities in processing land transactions under the <i>Indian Act</i> .	<ul style="list-style-type: none"> • Indian and Northern Affairs Canada, Land Management Manual, chapters 7, 8, 11, and 12 • INAC’s mandate (website)
We expected that INAC would have transferred control of land management to First Nations who requested it.	<ul style="list-style-type: none"> • <i>Indian Act</i>, sections 53(1) and 60(1) • <i>First Nations Land Management Act</i>, section 6(1) • Reserve Land and Environment Management Program, Background (INAC website) • Indian and Northern Affairs Canada, Land Management Manual, Chapter 11 • INAC Land Management Program, Goals (website) • INAC Report on Plans and Priorities 2006–07

Criteria	Sources
We expected that INAC would have taken adequate measures to facilitate First Nations taking control over their communities by providing training, tools, and guidance.	<ul style="list-style-type: none"> • <i>Indian Act</i>, section 60(1) • Indian and Northern Affairs Canada, Land Management Manual, Chapter 11 • INAC Land Management, Description of Operations (website) • INAC Report on Plans and Priorities, 2006–07 and 2008–09 • INAC’s Program Activity Architecture • Framework Agreement on First Nation Land Management, paras. 21 and 39.1(e)
We expected that INAC and Environment Canada would have met their key responsibilities in implementing their legislative options, programs, and policies related to solid waste management, fuel storage tank management, sewage treatment and disposal, and environmental emergencies in place on reserves.	<ul style="list-style-type: none"> • <i>Department of Indian Affairs and Northern Development Act</i>, section 4 • <i>Canadian Environmental Protection Act, 1999</i>, Part 1, section 9; Part 3, sections 44.1(a) and 217; and Part 9, sections 208 and 209 • <i>Indian Reserve Waste Disposal Regulations</i> • Environmental Stewardship Strategy

Management reviewed and accepted the suitability of the criteria used in the audit.

Period covered by the audit

We examined legislative options, institutions, and programs developed between March 2005 and May 2009. We examined actions by Indian and Northern Affairs Canada and Environment Canada to transfer control over land management to First Nations and address environmental threats on reserves over the past three years.

Audit work for this chapter was substantially completed on 29 May 2009.

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 6. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
<p>Transfer of control of land management</p> <p>6.34 Indian and Northern Affairs Canada should ensure that First Nations who are ready and who want greater autonomy over their land management can access either the Reserve Land and Environment Management Program or the <i>First Nations Land Management Act</i> regime. (6.14–6.33)</p>	<p>The Department’s response. Agreed. The Reserve Land and Environment Management Program (RLEMP) began as a pilot program in 2005 and has been funded internally since its inception. Existing authorities were used to allow for a pilot of the RLEMP, limited to First Nations participating in existing programs.</p> <p>Since 1996, a number of First Nations have sought access to the <i>First Nations Land Management Act</i> (FNLMA) regime. In 2002, an amendment to the Framework Agreement on First Nation Land Management was made to allow up to 30 First Nations in the developmental phase of the FNLMA regime at any given time.</p> <p>In March 2008, INAC had to close the FNLMA regime to new entrants due to a lack of funding. The Department is currently seeking additional resources to effectively implement the FNLMA regime for participants and expand it to new First Nations.</p> <p>In summer 2009, a sustainable funding source for the RLEMP was secured through the Aboriginal Economic Development Action Plan. With dedicated funding over four years, INAC will now be able to fully implement this program and allow up to 20 new First Nations per year to enter the RLEMP.</p>

Recommendation	Response
<p>6.47 Indian and Northern Affairs Canada, in collaboration with First Nations, should seek to ensure that an appropriate training program is developed for First Nations in the <i>First Nations Land Management Act</i> regime. The Department should also ensure that appropriate training is made available to First Nations in either the Reserve Land and Environment Management Program or the FNLMA regime. This training should address the requirements under each of the respective regimes. (6.35–6.46)</p>	<p>Agreed. The Reserve Land and Environment Management Program (RLEMP) has provided the only professional land management training available to First Nations for the past four years. Program evaluations and reviews of the RLEMP training program have concluded that the design and delivery of the training program are sound, credible, relevant and responsive to the needs of First Nations land managers and their communities.</p> <p>From 1999 to 2005, Indian and Northern Affairs Canada (INAC) provided funding to the First Nations Land Management Resource Centre to develop a training strategy and curricula that would address the specific capacity requirements of First Nations Land Management First Nations. In 2005, INAC discontinued this funding due to a lack of progress. While the RLEMP training was designed for First Nations managing lands under the <i>Indian Act</i>, the Department decided to offer that training on a priority basis to First Nations Land Management First Nations as a temporary measure.</p> <p>A renewed effort by the Resource Centre to develop training and curricula specific to First Nations Land Management is currently being undertaken and INAC anticipates receiving a proposal to that effect in 2009–2010.</p> <p>The RLEMP pilot project has been funded internally since its inception in 2005. The necessary sources of funds have not always been identified or available at the beginning of each fiscal year. As a result, there has been a delay in confirming whether the RLEMP training program could be offered in a given year and in notifying students of their acceptance into the training program.</p> <p>As mentioned previously, a sustainable funding source for the RLEMP was secured in spring 2009 through the Aboriginal Economic Development Action Plan. With dedicated funding for this program over four years, INAC will now be able to engage in the appropriate planning and forecasting required to notify new students slated to participate in the RLEMP training program much sooner than before.</p>

Recommendation	Response
Environmental protection	
<p>6.75 Indian and Northern Affairs Canada and Environment Canada should work together, in partnership with First Nations, to develop and implement a strategy to identify and address residual environmental regulatory gaps on reserves, as required. (6.48–6.74)</p>	<p>Agreed. Indian and Northern Affairs Canada and Environment Canada will work together, and in partnership with First Nations, to develop a strategy to identify and close residual regulatory environmental gaps on reserves. However, some of these gaps will require legislative changes.</p>
<p>6.84 Indian and Northern Affairs Canada should develop and implement a plan to remediate, by 2020, high-risk and medium-risk sites on reserves that became contaminated prior to 1998, as the federal government has committed to doing. (6.76–6.83)</p>	<p>Agreed. The Indian and Inuit Affairs Contaminated Sites Management Program of Indian and Northern Affairs Canada will continue to work with First Nation communities to assess suspected and known contaminated sites with the goal of reducing risks to human health and the environment and reducing departmental liabilities.</p> <p>The Contaminated Sites Management Program is currently on target to meet the 2020 deadline by maintaining an annual 15 percent reduction in the departmental liability related to known contaminated sites. As the program does not have dedicated program funds and has in the past been supported in part through internal reallocation, success in meeting 2020 targets will depend primarily on future levels of funding for the Federal Contaminated Sites Action Plan.</p>
Funding constraints	
<p>6.90 Indian and Northern Affairs Canada and Environment Canada should each assess the funding requirements necessary to fulfill their land management responsibilities on reserves and meet their commitments. Each department should also identify how it will finance these responsibilities. (6.85–6.89)</p>	<p>Indian and Northern Affairs Canada’s response. Agreed. The Department is regularly assessing its funding requirements to fulfill land management responsibilities on reserves. To fully implement the <i>First Nations Land Management Act</i> regime for current participants and to expand it to a significant number of new participants, the Department would require additional funding in future years.</p> <p>Environment Canada’s response. Agreed. The Department is assessing funding requirements for negotiating environmental management agreements under the <i>First Nations Land Management Act</i>, and options to address these requirements will be explored. Funding for other land management responsibilities will be assessed as part of the normal annual planning and priority-setting conducted by the Department.</p>

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