



## **HOUSING AND INFRASTRUCTURE: SAFE WATER FOR FIRST NATIONS**

### **OVERVIEW**

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In 2013, the *Safe Drinking Water for First Nations Act* (SDWFNA) came into force despite numerous objections by First Nations. First Nations have repeatedly called for the repeal of the SDWFNA.

Indigenous Services Canada (ISC) responded to this sustained advocacy in 2017, proposing that the Assembly of First Nations (AFN) take the lead in conceptualizing, elaborating, designing and implementing a re-envisioned engagement process for review of the current Act, including exploring co-development of a replacement Act for water and wastewater.

Mandated by the Chiefs-in-Assembly via Resolution 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, the AFN held a National Water Symposium and Tradeshow in Coast Salish territories from February 6 to 8, 2018, to renew and expand the dialogue on how to move beyond the flawed SDWFNA. As mandated, the AFN also developed a multi-year funding proposal to ensure that the process will be adequately resourced.

Building upon the dialogue generated at the inaugural National Water Symposium and Tradeshow, the AFN prepared a Concept Paper outlining options for how to co-develop First Nations safe drinking water and wastewater legislation in a manner that is respectful of First Nations inherent rights and Indigenous laws,

and meets the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples. This concept paper was shared and discussed with the Chiefs Committee on Housing and Infrastructure (CCoHI), the Chiefs-in-Assembly and the federal government.

At the Special Chiefs Assembly on Federal Legislation on May 1 and 2, 2018, after sharing the *Concept Paper on the Process to Develop a New Federal Bill on Safe Drinking Water for First Nations*, the preferred approach to repeal and replace the SDWFNA was identified and affirmed by the Chiefs-in-Assembly via Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*. A joint legislative co-development process will proceed, fully mandated by the federal government and in full partnership with First Nations.

In accordance with AFN Resolution 01/2018, the AFN is now in the process of assembling a Chiefs Committee on First Nations Safe Drinking Water Legislation.

This Chief's Committee will advise and support the development of Terms of Reference for a Joint Working Group on Safe Drinking Water for First Nations. This Joint Working Group will be composed of First Nations water/wastewater experts, as well as individuals with legal, technical and financial

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expertise, including those familiar with water ceremonies and protocols, and the corresponding federal government representatives.

This Joint Working Group will work via consensus and will report back to both the federal government and the Chief's Committee on First Nations Safe Drinking Water Legislation on a consistent and expedited basis as their work involves co-developing a proposed framework for safe drinking water legislation for First Nations. The CCoHI will be updated on a regular basis and the results will

be presented to the Chiefs-in-Assembly for their endorsement.

A "First Nations Safe Drinking Water Preliminary Concepts" document was created by the AFN to outline principles, core interests and stimulate discussion on what foundational elements must be included in this work. The document was presented to the Chiefs-in-Assembly at the Annual General Assembly on July 26, 2018, in Vancouver and it was formally endorsed via Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation Preliminary Concepts*.

### UPDATE

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Pursuant to Resolution 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*, and Resolution 26/2018, *Support for a First Nations Safe Drinking Water Legislation Preliminary Concepts*, the AFN is proceeding with regionally facilitated national engagements on the options for new First Nations safe drinking water legislation. The Chiefs Committee on First Nations Safe Drinking Water Legislation is being assembled and they will support the functions of the Joint Working Group that will be tasked with creating a Draft Framework for First Nations Safe Drinking Water Legislation. This Draft Framework, informed by the results, insights, feedback, and aspirations of First Nations collected in the 2019 national engagement process, will then be brought forth to the Chiefs-in-Assembly in the coming year for their review and endorsement.

Furthermore, an emergency Resolution was adopted by the Chiefs-in-Assembly at the Special Chiefs Assembly in Ottawa, December 4 to 6, 2018, regarding the Federal-Provincial-Territorial Committee's (FPT Committee) proposed 1, 4-Dioxane guideline for drinking water. Resolution 98/2018, *Health Canada 1,4-Dioxane Guideline Consultation*, mandates the AFN to call on Health Canada to consult with First Nations on this particular guideline and call for those consultations to be fully funded. Further, the Resolution calls on the AFN to write letters to the FPT Committee seeking a renewed consultation with First Nations including adoption of the 'precautionary principle' for this likely carcinogen.

### NEXT STEPS

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Resolution 26/2018 mandated the AFN to move forward using the "Preliminary Concepts" document in national engagements with First Nations so that a First Nations Safe

Drinking Water Legislation Draft Framework can be created.

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In order to support the regionally-led national engagement on First Nations safe drinking water legislation, the AFN is currently drafting a Discussion Paper with the working title of *“Life and Future: First Nation’s Water Law Reform in 2019”*. The AFN will share this paper nationally once it is finalized and it will form, along with the “Preliminary Concepts” the conceptual foundation for the forthcoming regionally led national engagement process.

This national engagement will inform the development of the First Nations Safe Drinking Water Legislation Draft Framework which, in turn, will form the basis of a co-development process between First Nations and Canada as new First Nations safe drinking water and wastewater legislation is being created.

The AFN insists that this legislation will be developed in a manner that affirms and

ensures First Nations rights, interests, aspirations, inherent rights and laws, standards, guidelines and processes regarding water are protected.

Building upon the success and dialogue at the inaugural National Water Symposium and Tradeshow in Coast Salish territories from February 6 to 8, 2018, the AFN will host the second annual National Water Symposium and Tradeshow in Niagara Falls, Ontario, from February 26 to 28, 2019.

In regards to the mandated activities arising from Resolution 98/2018, the AFN has drafted these letters and, upon submission and response from the Minister of Health and the FPT Committee, the AFN will update the Chiefs on the results of this advocacy and seek direction on next steps.

