

# Indian and Northern Affairs Canada (INAC)

Environmental Commitments



# Background

- The total amount of reserve land is doubling and the total population on reserve is growing at a rate at least twice the national average.
- Increasing scale and sophistication of development projects on reserve.
- *Indian Act* is inadequate to deal with these situations in terms of authorities and enforcement provisions.
- There is a serious regulatory gap on reserve



# Provincial Environmental Laws

- Provinces have comprehensive regulatory regimes that regulate the full life cycle of activities.
- Focus on the operational and land use aspects of activities.
- Provincial regulatory regimes do not apply on reserve.



# Federal Environmental Laws

- Do not provide a comprehensive regulatory framework on federal land or on reserve lands but rather set national standards/requirements.
- Apply on reserve:
  - S. 91(24) of the *Constitution Act* gives Parliament exclusive legislative jurisdiction in respect of “Indians and Lands reserved for Indians”.



# The *Indian Act*

- Under the *Indian Act*, INAC uses a contract process (permitting or leasing) rather than regulations to manage land use activities on reserve.
- INAC lacks the capacity and resources to effectively monitor and enforce environmental protection requirements on reserve



## *The Indian Act (cont`d)*

- Protecting the environment under the *IA* is difficult because:
  - *IA* does not provide for a proper enforcement regime;
  - Maximum penalty for non-compliance is \$1000;
  - No authority to search and seize property when violations are known and suspected;
  - *IA* does not cover all activities on reserve



# Federal obligations

- Legal requirements – Federal law
- Policy requirements
- Best management practices
- All are considered part of a management regime in order to demonstrate due diligence



# Due Diligence

Due diligence is the principle defence against allegations of negligent conduct and regulatory prosecution:

- Reasonable efforts to prevent the prescribed activity (proactive measures);
- Appropriate steps to deal with any identified problems (reactive measures).
- Sound environmental management on reserve lands means ensuring that federal legal and environmental liabilities are addressed through effective due diligence



# First, a little history...

- INAC initiated an environmental issues inventory (EII) of all First Nation reserve lands across Canada
- The inventory was completed in three phases
  - Phase 1 internal to INAC record review
  - Phase 2 on reserve inspections
  - Phase 3 sampling programs
  - When required remediations



# Why do an inventory?

- To meet changing environmental legislation; updates to the Canadian Environmental Protection Act; the new Canadian Environmental Assessment Act (1995), SDS Strategy; Environmental Site Assessments
- Need to address contaminated sites found on reserve
- Be proactive & show sound environmental management



# What did they learn in the EII?

- The inventory of reserve lands in Alberta allowed INAC to identify and record high risk sites and activities.
- What they found was
  - solid waste management
  - fuel storage
  - Site specific activities (sewage, dry cleaners, wood treatment, sawmills, third party leases)  
15%

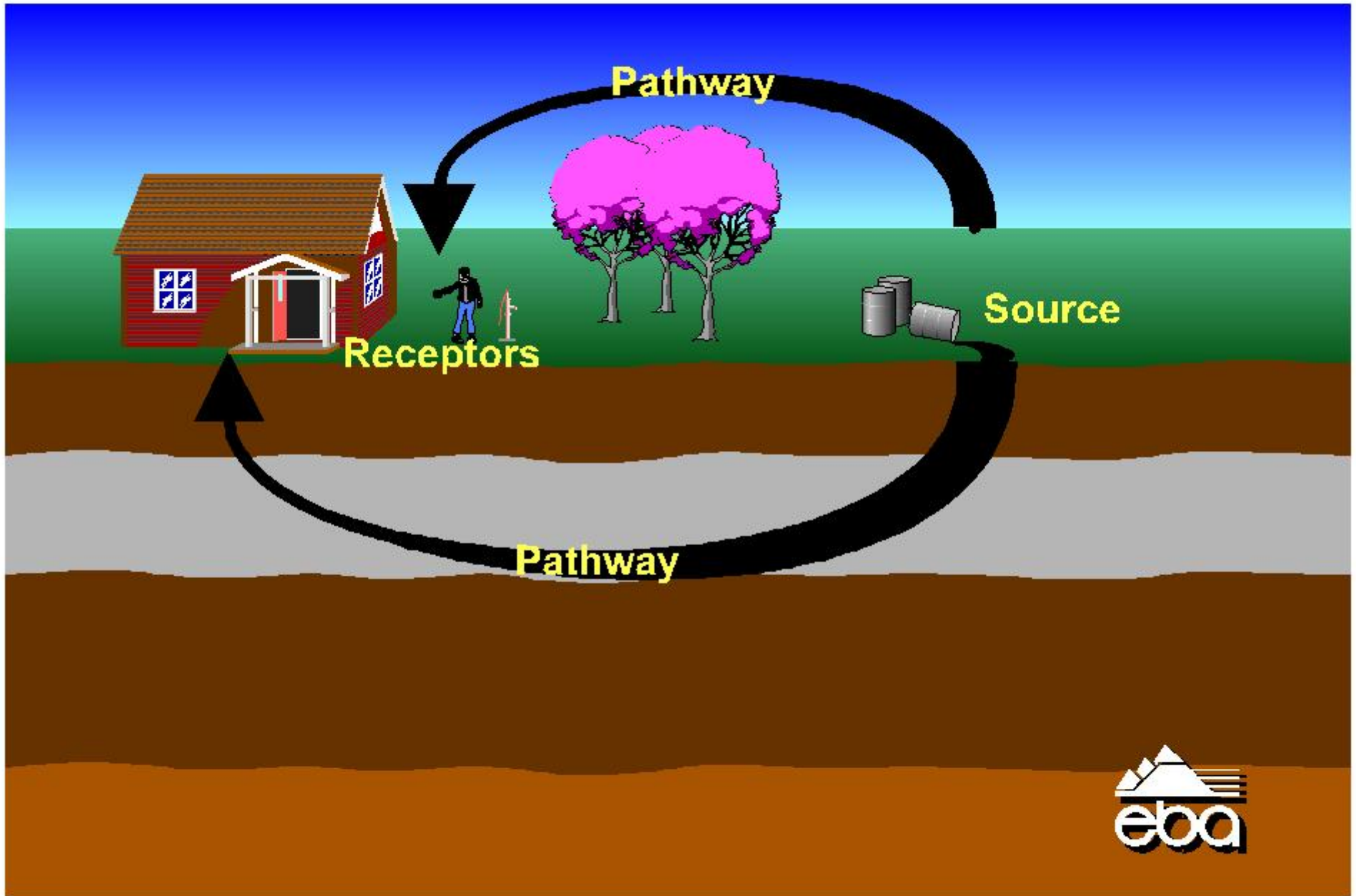












# INAC response to the EII

- Once the inventory was complete INAC recognized the need to improve environmental management on reserve
  - Contaminated sites needed to be cleaned-up
  - Owner operator responsibilities had to be defined
  - Strategies for pollution prevention had to be jointly developed with First Nations



# The Environmental Stewardship Strategy

- A National inter-sectoral plan of action to
  - demonstrate leadership in environmental stewardship;
  - address environmental concerns and integrate environmental “best practices” into the planning and decision-making of program sectors’ activities on reserve land;
  - protect the health and safety of First Nations and the environmental integrity of reserve lands;
  - reduce departmental liabilities and enhance INAC’s ability to fulfill its statutory obligations;
  - promote sustainable development.



# INAC Environmental Vision

“To demonstrate leadership in environmental stewardship in protecting the health and safety of First Nations people and the environmental integrity of reserve lands.”



# What has been done to date?

- INAC Contaminated Sites Management Policy (2002);
- IIAP Contaminated Sites Management Program (2003);
- IIAP Environment Policy (2003);
- DM Memorandum on Environmental Stewardship (2003);
- LTS ADM Memorandum on ESSIMS EA System (2004);
- LTS ADM Memorandum on ESSIMS Contaminated Sites System (2004);
- LTS ADM Memorandum on SARA Bulletin (2004);
- Environmental Management Directive (2005);
- Contaminated Sites Management Directive (2006);
- Environmental Assessment Directive (pending approval in 2007);
- Environmental Assessment Procedural Guide (2007);
- Contaminated Sites Management Program Guide (in progress);
- Environmental Response Directive (in progress).



# What does this mean to First Nations?

- INAC has an environmental policy and is working towards an environmental management system in order to meet their environmental obligations to First Nations and the government of Canada
- New policies and procedures will impact how First Nations do business with INAC
- Environmental requirements will continually change/improve



# The Alberta Region's Plan

- Alberta was one of the first regions to;
  - Hold an Environmental Learning regime for INAC staff
  - Review the National EA procedural Guide and customize it for Alberta's use
  - Provide an ELR for First Nations



# How does INAC do business?

- INAC can only influence decisions on reserve through policy and procedures
- INAC staff are provided standard reference materials and tools to ensure consistency across INAC regions (EA Procedural Guide)
- Where laws do not apply policy & environmental tools such as ESA and Audits



# Future initiatives

- Develop an Environmental Performance framework (EPF)
- Track new laws and regulations to determine how they impact INAC and First Nations
- Contaminated sites management – awareness, tracking and managing
- Tank and waste site inventories



# Future initiatives (cont`d)

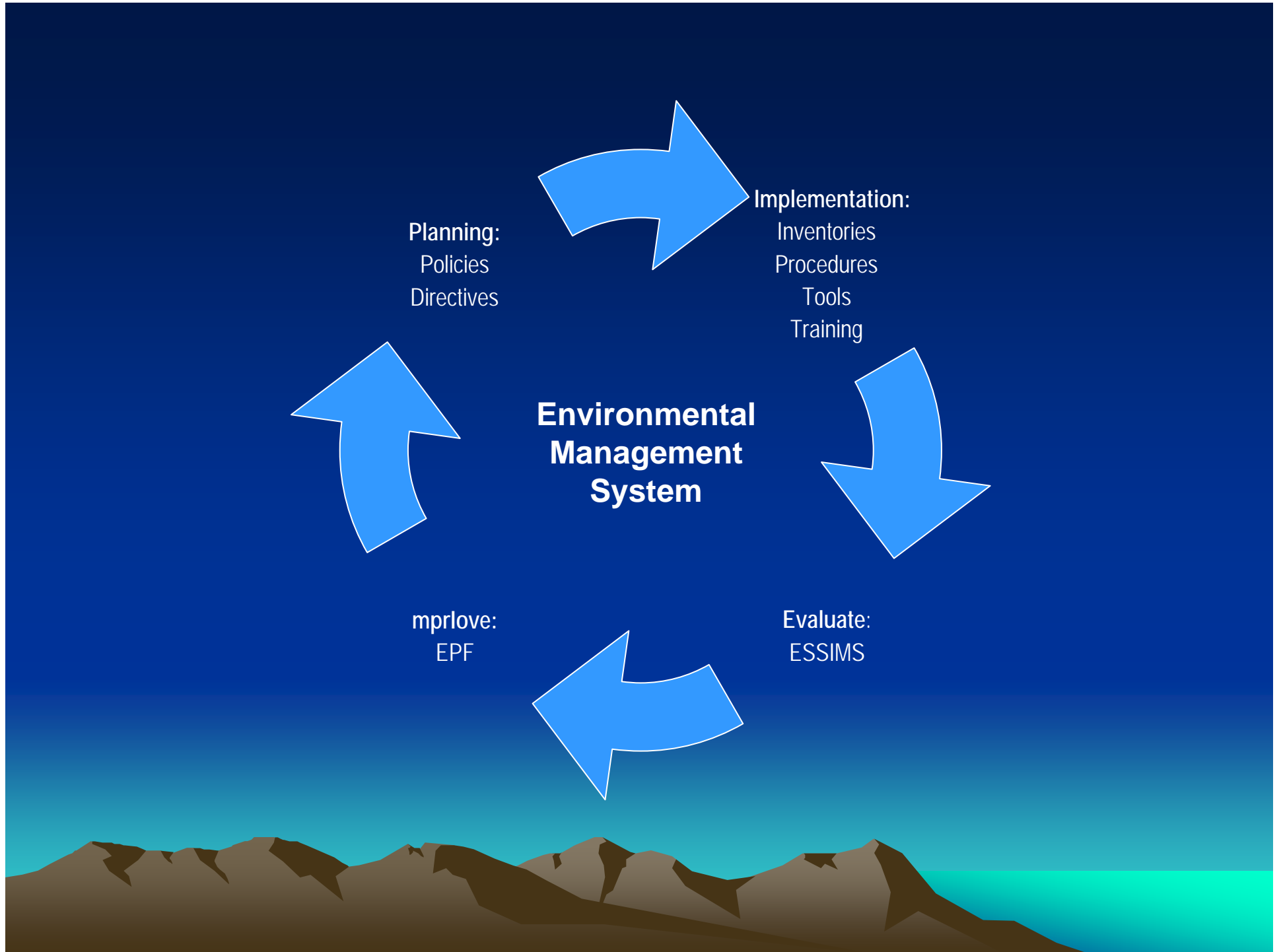
- Environmental assessment procedural guide implementation
  - Build relationships with OGD
- Complete tanks and waste site inventories
- Professional and institutional development
  - CEIR and ICE
- Environmental Learning Regime (ELR) training



# Objectives of the ELR

- Share the evolution of environmental management on reserve lands in Alberta
- Keep communities up to date and aware of current applicable environmental legislation on reserve and related EM tools
- Share current INAC policies and procedures with communities
- Obtain feedback on required future training materials





**Planning:**  
Policies  
Directives

**Implementation:**  
Inventories  
Procedures  
Tools  
Training

**Environmental  
Management  
System**

**Evaluate:**  
ESSIMS

**Improve:**  
EPF