



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

May 17, 2017 1:30 p.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. May 3, 2017 LOC Meeting Minutes

III. Current Business

1. Petition: Child Care Department Consumer Complaint Policy
2. Children's Code (HANDOUT)
3. Legal Resource Center (HANDOUT)
4. General Tribal Council Meetings Law
5. Administrative Rulemaking Amendments (HANDOUT)
6. Conflict of Interest Permanent Amendments

IV. New Submissions

1. All-Terrain Vehicle Law Amendments
2. Hunting, Fishing and Trapping Amendments
3. Public Use of Tribal Land Amendments
4. Water Resources Ordinance Amendments
5. Well Abandonment Law Amendments
6. On-Site Waste Disposal Ordinance Amendments

V. Additions

VI. Administrative Updates

1. Domestic Animals Amendments E-Poll
2. Per Capita Rule No. 1-Distribution Rule Certification
3. Hunting, Fishing, & Trapping Rule Handbook Certification
4. FY17 semi-annual GTC Report

VII. Executive Session

VIII. Recess/Adjourn



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

May 3, 2017 9:00 a.m.

Present: Brandon Stevens, Jennifer Webster, Fawn Billie, Tehassi Hill.

Excused: David P. Jordan.

Others Present: Jennifer Falck, Candice Skenandore, Clorissa Santiago, Maureen Perkins, Tani Thurner, Rae Skenandore, Krystal John, Bonnie Pigman, Laura Manthe, Gene Schubert.

I. Call to Order and Approval of the Agenda

Tehassi Hill called the May 3, 2017 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda, seconded by Fawn Billie. Motion carried unanimously.

II. Minutes to be approved

1. April 19, 2017 LOC Meeting Minutes

Motion by Jennifer Webster to approve the April 19, 2017 LOC meeting minutes; seconded by Fawn Billie. Motion carried unanimously.

III. Current Business

1. Domestic Animals (Oneida Tribal Regulation of) Amendments (01:03-10:03)

Motion by Fawn Billie to direct the Legislative Reference Office to update the legislative analysis and then conduct an e-poll to approve the public meeting packet, and hold a public meeting on June 5, 2017; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to forward to the Finance Department for a fiscal analysis to be completed by June 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

2. Landlord-Tenant Permanent Amendments (10:05-11:16)

Motion by Tehassi Hill to approve the public meeting packet and forward the Landlord-Tenant permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie. Motion carried unanimously.

3. Conflict of Interest Permanent Amendments (11:17-14:25)

Motion by Tehassi Hill to approve the public meeting packet and forward the Conflict of Interest permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Jennifer Webster. Motion carried unanimously.

4. Vehicle Driver Certification and Fleet Management (14:30-15:38)

Motion by Fawn Billie to approve the public meeting packet and forward the Vehicle Driver and Fleet Management law to a public meeting to be held on June 5, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie. Motion carried unanimously.

5. General Tribal Council Meetings Law (15:42-20:54)

Motion by Jennifer Webster to approve the draft and forward the General Tribal Council Meetings law for a legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Jennifer Webster to have Brandon Stevens put the General Tribal Council Meetings law on the May 15, 2017 Oneida Business Committee work meeting agenda; seconded by Fawn Billie. Motion carried unanimously.

6. Administrative Rulemaking Law Amendments (20:55-23:02)

Motion by Tehassi Hill to approve the draft Administrative Rulemaking law amendments and send for legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

7. Audit Law Amendments (23:04-32:14)

Motion by Jennifer Webster to approve the public meeting packet and forward the Audit law amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Updates

1. Conflict of Interest Emergency Amendments E-Poll Results (32:18-32:53)

Motion by Tehassi Hill to accept the e-poll results of April 25, 2017 into the record; seconded by Fawn Billie. Motion carried unanimously.

Note: During discussion on this matter the Legislative Reference Office Director, Jen Falck, informed the Legislative Operating Committee that the record of the e-poll results will be updated in the LOC packet due to include David P. Jordan's full response to the e-poll.

2. Children's Code E-Poll Results (32:55-33:11)

Motion by Fawn Billie to accept the e-poll results of April 20, 2017 into the record; seconded by Tehassi Hill. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn the May 3, 2017 Legislative Operating Committee meeting at 9:33 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee
May 17, 2017

Child Care Department Consumer Complaint Law

Submission Date: 9/17/14	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: A petition was submitted to mandate the OBC review, amend and implement a new complaint process for Oneida Child Care. The intent of the petition is to provide the minimum requirements of the new process which include mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC.

This item was added to the active files list on June 6, 2012. A legislative analysis was presented to GTC on November 19, 2012 and GTC approved the petition, directing the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department. Since then a draft was developed and an update was given to GTC on July 1, 2013 as directed. Public meetings were held on October 13, 2013 and February 27, 2014. On April 16, 2014 the sponsor began to develop the Policy through a series of work meetings.

9/17/14 LOC: Motion by Jennifer Webster to add the Child Care Department Consumer Complaint Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

11/18/14: Work meeting held. Attendees include: Candice Skenandore, Chenoa Webster, Michelle Mays, Dorothy A. Skenandore, Jenny Webster, Rae Skenandore, Donna Christensen, Jacob Metoxen, Bob Keck and Norbert Hill.

11/24/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays and Stephen Webster.

12/5/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays, Jennifer Webster, Dorothy Skenandore and Diane Heim-McLester

12/12/14: Work meeting held. Attendees include: Richard Cluckey, Stephen Webster and Candice Skenandore

2/23/15: Work meeting held. Attendees include: Norbert Hill, Dorothy Skenandore, Jennifer Webster, Bob Keck, Donna Christensen, Jessica Wallenfang, Rae Skenandore, Susan House, Chenoa Webster, Jacob Metoxen

3/18/15 LOC: Motion by Fawn Billie to defer the Child Care Department Consumer Complaint Policy for a legislative analysis and fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

6/3/15 LOC: Motion by Tehassi Hill to defer back to the Legislative Reference Office for redrafting; seconded by David P. Jordan. Motion carried unanimously.

7/15/15/ LOC: Motion by Jennifer Webster to defer the Petition: Child Care Department Consumer Complaint Policy back to the Legislative Reference Office to make changes; seconded by David P. Jordan. Motion carried unanimously.

2/13/17: *Work meeting held.* Attendees include: David P. Jordan, Jennifer Webster, Brandon Stevens, Clorissa Santiago, Candice Skenandore, Liz Somers, Tom Wilbur

2/15/17 LOC: Motion by Jennifer Webster to establish a high priority level for the Petition: Child Care Department Consumer Complaint Policy; seconded by Tehassi Hill. Motion carried unanimously.

5/1/17: *Work Meeting Held.* Attendees include: Clorissa Santiago, Candice Skenandore, Jennifer Falck, Tehassi Hill, Cheona Webster, Jessica Wallenfang, Stephen Webster, Dorothy Skenandore, George Skenandore, Cathy Bachhuber, Fawn Billie, Brandon Stevens. Drafter will update the draft with changes discussed during work meeting.

Next Steps:

- Review and accept the draft of the Child Care Department Consumer Complaint law and send for a legislative analysis to be completed for June 7, 2017.

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Title 9. Education – Chapter 902

Child Care Department Consumer Complaint

902.1. Purpose and Policy	902.9. Processing Level One through Level Three Complaints
902.2. Adoption, Amendment, Repeal	902.10. Processing Level Four Complaints
902.3. Definitions	902.11. Appeal
902.4. Filing of a Complaint	902.12. Video Surveillance
902.5. Complaint Coordinator	902.13. Self-Reporting by Department Staff
902.6. Responsibilities of the Complaint Coordinator Upon Receipt of a Complaint	902.14. Mandatory Reporting to the Oneida Business Committee
902.7. Types of Complaints	902.15. Parent/Teacher Organization
902.8. Determination of the Severity of Complaint and Complaint Investigators	902.16. Enforcement

902.1. Purpose and Policy

902.1-1. *Purpose.* The purpose of this law is to provide a formal process for addressing complaints for anyone who uses the services of the Oneida Child Care Department. The law is not intended to resolve employee complaints or grievances which shall be addressed through the process specified in the Nation's laws, rules and policies governing employment.

902.1-2. *Policy.* It is the policy of the Nation to provide a safe, secure and nurturing environment for all children that are enrolled in the Oneida Child Care Department. It is also the policy of the Nation to allow any person who utilizes the services of the Oneida Child Care Department to have any and all complaints concerning those services addressed in a timely and professional manner.

902.2. Adoption, Amendment, Repeal

902.2-1. This law is adopted by the Oneida Business Committee by resolution _____.

902.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

902.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portion(s).

902.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control; provided that this law repeals the following:

(a) Resolution BC-07-26-95-A *Policy on Internal Investigation of Complaints.*

902.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

902.3. Definitions

902.3-1. This article shall govern the definitions of words and phrases used within the law. All words not herein defined shall be used in their ordinary and everyday sense.

(a) "Abuse" means any of the following:

- (1) Physical injury inflicted on a child by other than accidental means;
- (2) Sexual assault of a child;
- (3) Sexual exploitation of a child;
- (4) Permitting, allowing, or encouraging a child to be involved in prostitution;
- (5) Causing mental harm to a child; or

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- (6) Causing a child to view or listen to sexual activity or sexually explicit materials.
- (b) “Area Manager” means the Area Manager of Education and Training within the Governmental Services Division.
- (c) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) “Complaint” means an allegation of certain wrongdoing against an Oneida Child Care staff member or the Department.
- (e) “Complaint coordinator” means the individual designated to receive and handle all complaints alleged against the Department.
- (f) “Complaint investigator” means any of the following individuals as recommended by the complaint coordinator to investigate alleged complaints against the Department:
- (1) the Supervisor of an Oneida Child Care staff member that has a complaint against him or her;
 - (2) the Supervisor’s substitute; and/or
- (g) (3) an outside agency designated to investigate a complaint, including but not limited to, the Wisconsin Department of Children and Families and the Oneida Police Department.
- “Department” means the Oneida Child Care Department.
- (h) “Director” means the individual employed as the Oneida Child Care Department Director.
- (i) “Division Director” means the individual employed as the Governmental Services Division Director.
- (j) “Nation” means the Oneida Nation.
- (k) “Neglect” means a failure, refusal or inability of an Oneida Child Care staff member to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger the physical health of a child, lack of supervision, or total abandonment.
- (l) “Ombudsperson” means an individual employed by the Nation who functions as a designated confidential, independent, neutral and informal dispute resolution resource that does not represent the Nation or any specific party, but advocates for fairness and the application of a fair and equitable process.
- (m) “Substantiated” means a finding that the complaint or allegation in the complaint is valid because there is proof by a preponderance of the evidence.
- (n) “Supervisor” means the person in charge of the other Oneida Child Care staff, which may include the Oneida Child Care Department Director.
- (o) “Unsubstantiated” means a finding that the complaint or allegation in the complaint is not valid because there is not proof by a preponderance of the evidence.

902.4. Filing of a Complaint

902.4-1. *When to File.* A complaint filed within sixty (60) days of the alleged incident shall guarantee a review of the complaint. Any complaint filed after sixty (60) days from the alleged incident shall not guarantee an investigation.

- (a) Although a complaint can be filed within sixty (60) days of an alleged incident, video surveillance footage is only available from the Department for ten (10) days after an alleged incident occurs.

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902.4-2. *Who May File.* The following people may file a complaint:

- (a) Any parent or guardian who is currently utilizing the services of the Department;
- (b) Any person who is on the child's emergency contact list; and/or
- (c) Any person who witnesses any action that would warrant an investigation.

902.4-3. *Format of Complaint.* A complaint shall be filed in one (1) of the following formats:

- (a) the specific form provided for by the Department, which shall at all times be made available at the facility as well as on the Department's webpage; or
- (b) in writing as long as it contains the statement of facts required by section 902.4-4.

902.4-4. *Statement of Facts.* The complaint filed shall contain a statement of facts which describes the specific allegations made against the Department and/or an employee of the Department. The statement of facts shall include, if known, but is not limited to the following information:

- (a) The name(s) of the child(ren) involved;
- (b) The name(s) of the Oneida Child Care staff member(s) involved;
- (c) The specific date(s) and time(s) of the alleged incident(s);
- (d) The specific details of the alleged incident;
- (e) Name(s) of any witness(es) to the alleged incident; (f) Any noted impacts; and
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address and telephone number.

902.4-5. *Where to File Complaint.* Completed complaints shall be delivered to the complaint coordinator. If the complaint coordinator is unavailable, then a complaint shall be delivered to the Division Director.

902.4-6. *Repeat Complaints.* A complaint that was deemed unsubstantiated or rejected on appeal shall not be re-filed unless new facts or new evidence have been discovered.

902.5. Complaint Coordinator

902.5-1. The complaint coordinator shall receive and handle all complaints alleged against the Department. The complaint coordinator shall be one (1) of the following individuals:

- (a) The Area Manager;
- (b) The Ombudsperson; or
- (c) A designee assigned by the Area Manager.

902.6. Responsibilities of the Complaint Coordinator Upon Receipt of a Complaint.

902.6-1. *Receipt of an Incomplete Complaint.* The complaint coordinator shall develop standard operating procedures for handling complaints that are missing the information required for the statement of facts.

902.6-2. *Collection of Video Surveillance.* The complaint coordinator shall immediately contact the Department and request that the Department secure an electronic copy of the appropriate video surveillance footage that is relevant to the complaint if the video surveillance footage is still available. The complaint coordinator shall provide the video surveillance footage to the Nation's Records Management Department.

902.6-3. *Notification of Receipt of Complaint.* Upon receipt of the complaint, the complaint coordinator shall immediately forward a copy of the complaint to the Director and Division Director. The complaint coordinator must also notify the person filing the complaint by mail or e-mail that the

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complaint was received and what the next steps will be. If the person who filed the complaint is not the parent of the child at issue, the parent(s) of the child shall be noticed that the complaint was received and what the next steps will be.

902.6-4. *Determination of Severity of Complaint and the Complaint Investigator.* Upon receipt of the complaint, the complaint coordinator shall make a determination as to the severity of the complaint and recommend to the Department an appropriate complaint investigator. The complaint coordinator shall have five (5) business days to refer the matter to the complaint investigator. However, if the person who filed the complaint agrees to mediate the matter with the complaint coordinator, any time limits under this law may be suspended while the parties are in mediation. The complaint coordinator shall have five (5) days to recommend a complaint investigator, if needed, after mediation ends.

902.6-5. *Notification of the Risk Management Department.* If the complaint coordinator determines the complaint is a severity level two (2), three (3) or four (4), the complaint coordinator shall forward a redacted copy of the complaint to the Risk Management Department.

902.7. Types of Complaints

902.7-1. Complaints against the Department may include, but are not limited to, violations involving the following:

- (a) licensed capacity;
- (b) reports of incident or accident;
- (c) background checks;
- (d) reporting abuse or neglect of a child;
- (e) teacher qualifications;
- (f) staff orientation;
- (g) supervision of children;
- (h) exceeding limit of staff-to-child ratio;
- (i) maintaining accurate attendance records;
- (j) maximum group size;
- (k) potential source of harm on premises (hazards);
- (l) outdoor play space – potential source of harm (hazards);
- (m) access to materials potentially harmful to children;
- (n) flaking or deteriorating paint;
- (o) energy absorbing surfaces on playgrounds;
- (p) medications;
- (q) pets or animals;
- (r) transportation;
- (s) infant sleep position;
- (t) compliance with laws;
- (u) behavior of caregivers, employees or others;
- (v) potentially dangerous items on premise/firearms, ammunition on premises;
- (w) alcohol or non-prescribed drug use;
- (x) child management techniques; and/or
- (y) child abuse or neglect.

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902.8-1. The complaint coordinator shall determine the severity of the complaint and recommend the appropriate complaint investigator by using the following guidelines:

(a) Level one (1) complaint:

(1) *Severity*. The severity of a level one (1) complaint may be deemed very mild, mild or moderate.

(2) *Description*. A level one (1) complaint includes, but is not limited to, complaints of the following: poor business practices, inadequate equipment and furnishings, inappropriate discipline, parents not notified of injury. (3) *Complaint Investigator*. A level one (1) complaint shall be investigated by the supervisor, if the complaint is not resolved through mediation by the complaint coordinator.

(b) Level two (2) complaint:

(1) *Severity*. The severity of a level two (2) complaint shall be deemed serious.

(2) *Description*. A level two (2) complaint involves complaints that do not pose a risk of direct harm to children. Level two (2) complaints include, but are not limited to, medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care for a child, and serious physical injury to a child or child admitted to a hospital.

(3) *Complaint Investigator*. A level two (2) complaint shall be investigated by the supervisor, but the investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

(c) Level three (3) complaint:

(1) *Severity*. The severity of a level three (3) complaint shall be deemed very serious.

(2) *Description*. A level three (3) complaint involves complaints that pose a risk of direct harm to children. Level three complaints include, but are not limited to, complaints of gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of alcohol or drugs.

(3) *Complaint Investigator*. A level three (3) complaint shall be investigated by the supervisor and the Oneida Police Department. The investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

(4) The Department may place any employee accused of a level three (3) complaint on leave according to the Nation's Investigative Leave Policy until completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. If placed on investigative leave, the employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. If the investigation by one agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with reviewing and finalizing the substantiated investigative findings and corrective plan before the

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investigation by other agencies are completed.

(d) Level four (4) complaint:

(1) *Severity*. The severity of a level four (4) complaint shall be deemed child abuse or neglect.

(2) *Description*. A level four (4) complaint includes, but is not limited to, any action that results in the imminent danger to a child, such as child abuse or neglect.

(3) *Complaint Investigator*. A level four (4) complaint shall be investigated by the supervisor, Wisconsin Department of Children and Families and the Oneida Police Department.

(4) The Department shall automatically place any employee accused of a level four (4) complaint on leave according to the Nation's Investigative Leave Policy until completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. If placed on investigative leave, the employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. A substantiated level four (4) complaint shall result in the automatic termination of the employee. If the investigation by one agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with termination of the employee before the investigation by other agencies are completed.

902.8-2. *Conflict of Interest*. Any potential conflict of interest the complaint coordinator may have in conducting the investigation shall be reported to the complaint coordinator. If it is determined that the complaint investigator has a conflict in conducting the investigation, notify the complaint coordinator shall recommend a new complaint investigator to conduct the investigation.

902.9. Processing Level One through Level Three Complaints

902.9-1. *Mediation*. If the person who filed the complaint agrees, the complaint coordinator shall facilitate a mediation meeting(s) between the person who filed the complaint and the Department. The complaint coordinator may use a trained mediator to facilitate the mediation meetings. If the person who filed the complaint is not the parent of the child at issue, the parent(s) of the child shall be noticed and have a right to attend the mediation meeting(s). This meeting shall take place within five (5) business days of the filing of the complaint. The intent of this meeting(s) is to resolve the complaint prior to commencing a full investigation.

(a) If a resolution is reached during mediation, the complaint coordinator shall inform the Director that a corrective action plan shall be prepared, if necessary, based on the agreement.

(b) If the matter is not resolved through mediation, a full investigation shall be completed and the complaint coordinator shall have five (5) days to recommend a complaint investigator.

902.9-2. *Investigation*. Once the complaint investigator is assigned, he or she shall have five (5) business days to complete a thorough investigation.

(a) *Thorough Investigation*. A thorough investigation by the complaint investigator may include, but is not limited to, the following:

(1) An interview with the Department staff members involved in the complaint;

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- (2) An interview with the individual who made the complaint;
- (3) The collection of statements from potential witnesses; and
- (4) The review of any available video surveillance footage.

(b) *Extension of the Investigation.* The complaint coordinator may grant a five (5) business day extension for extenuating circumstances. If an extension is granted, the complaint coordinator shall send written notice to the person filing the complaint within twenty-four (24) hours of that extension being granted. If the person who filed the complaint is not the parent of the child at issue, the complaint coordinator shall also send written notice to the parent(s) of the child within twenty-four hours of that extension being granted.

902.9-3. *Results of the Investigation.* Upon completion of the investigation, the complaint investigator shall either substantiate or not substantiate the complaint and forward copies of all documents and findings to the complaint coordinator, Director and Division Director for review. The complaint coordinator, Director and Division Director shall complete a review within five (5) business days of receiving the investigation findings.

(a) *Unsubstantiated Findings:* The complaint coordinator, Director and/or Division Director may accept or override the complaint investigator's determination that the complaint is not substantiated.

(1) If the complaint coordinator, Director and/or Division Director decide to override the complaint investigator's decision to not substantiate the complaint, the Director shall complete a corrective action plan within five (5) business days of overriding the decision to not substantiate the complaint.

(2) The Director's corrective action plan shall be finalized by the complaint coordinator and Division Director within five (5) business days.

(b) *Substantiated Findings:* The complaint investigator shall create a corrective action plan within five (5) business days of forwarding the investigation findings for a complaint that is substantiated.

(1) The complaint coordinator, Director and Division Director shall not have the authority to override a decision by the complaint investigator to substantiate the complaint.

(2) The Director and complaint coordinator shall finalize the corrective action plan within five (5) business days.

(c) If investigations from different complaint investigators produce different results, a substantiated complaint shall take precedence over any unsubstantiated complaints.

902.9-4. *Notification of Results of the Investigation.* The complaint coordinator shall notify the person who filed the complaint of the results of the investigation in writing by U.S. or private mail using a delivery tracking feature within five (5) business days of receiving the finalized corrective action plan or findings that the complaint was not substantiated. If the person who filed the complaint is not the parent of the child at issue, the complaint coordinator shall also notify to the parent(s) of the child of the results of the investigation in the same manner. The information provided to the person filing the complaint and/or the parent(s) of the child shall include, but is not limited to the following:

(a) Details of the investigation which would not compromise the legally-protected confidentiality of any other person;

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(b) Whether or not the complaint was substantiated; and

(c) Any corrective action plan prepared to resolve the complaint, redacting specific employee related matters or information; or

(d) An explanation as to why the complaint is unsubstantiated, if necessary.

902.9-5. The complaint coordinator shall provide the corrective action plan to the Director and Division Director. All Department staff members shall comply with any corrective action plan.

902.10. Processing Level Four Complaints

902.10-1. When a complaint involving an allegation under level four (4) is filed against an employee of the Department the complaint coordinator or any other person receiving the complaint shall immediately refer the matter to the Wisconsin Department of Children and Families and Oneida Police Department for investigation and follow through with the investigation results. The complaint coordinator shall also inform the supervisor of the level four (4) complaint. The supervisor shall investigate the level four (4) complaint following the same process as a level one (1) through level three (3) complaint as described in section 902.9.

902.11. Appeal

902.11-1. A person who filed a complaint and is dissatisfied with the finding that the complaint is unsubstantiated, or is dissatisfied with the corrective action plan, may appeal the matter to the Division Director. The appeal shall be in writing, and shall be submitted to the Division Director within ten (10) business days of receiving the results of the investigation and/or the corrective action plan.

902.11-2. The Division Director shall complete his or her review of the appeal and come to a determination within five (5) business days of receiving the written appeal. The Division Director may suspend the time limits for an appeal decision if the Division Director determines that more investigation on the matter is necessary. The Division Director shall then inform the person filing the appeal in writing of his or her decision.

902.11-3. If the person filing the appeal is dissatisfied with the Division Director's decision, he or she may appeal the Division Director's decision to the Nation's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure.

902.12. Video Surveillance

902.12-1. *Department Video Surveillance.* The Department, for security purposes, shall have daily video surveillance. The video surveillance footage shall not be erased by anyone in the Department. The Department shall retain the video surveillance footage for at least ten (10) business days and dispose of the video surveillance footage in accordance with their standard operating procedures.

902.12-2. *Records Management Department Maintenance of Video Surveillance.* The Records Management Department shall be responsible for the secured maintenance of any video surveillance footage related to a complaint received from the complaint coordinator.

(a) Only the complaint coordinator, complaint investigator, Director, Division Director, police department, Risk Management Department, and/or the Wisconsin Department of Children and Families shall have access to the video surveillance footage.

(b) The video surveillance footage shall be viewed at the Records Department with the

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complaint coordinator or a Records Management Department personnel present.

(c) The Records Management Department shall maintain the video surveillance footage until the time period for an appeal to the Nation's Judiciary has expired.

(d) The Records Management Department shall follow a standard operating procedure for disposal of video surveillance that complies with the child care industry standard.

902.13. Self-Reporting by Department Staff

902.13-1. If any Department staff member witnesses another staff member behaving in an unethical or otherwise inappropriate manner as defined by the State of Wisconsin licensing requirements, that person shall immediately document and report such behavior to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

902.13-2. If any Department staff member witnesses another staff member engaging in behavior that constitutes child abuse or neglect, the staff member shall immediately report the child abuse or neglect pursuant to laws governing reporting child abuse and neglect. The Department staff member shall also report the witnessed abuse or neglect to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

902.14. Mandatory Reporting to the Oneida Business Committee

902.14-1. The Governmental Services Division shall include in their quarterly report to the Oneida Business Committee complaint information for the Department. Complaint information regarding the Department shall include, but it not limited to, the following:

(a) the number of complaints filed against the Department and it's staff;

(b) number of substantiated complaints; and

(c) the number of investigation conducted.

902.14 -2. The Division Director shall address and report to the Oneida Business Committee any continuous patterns of failure by the Department to follow the corrective action plan.

902.15. Parent-Teacher Organization

902.15-1. The Department shall form a parent-teacher organization for the purpose of providing an opportunity for parents and Department staff to come together in order to gather and share information, ideas, and concerns, plan activities to enhance or improve the Department and lives of children, and to foster community amongst all those involved.

902.16. Enforcement

902.16-1. Any employee of the Nation found violating this law or retaliating against the children or family involved in a complaint shall be subject to discipline in accordance with the Nations laws, rules and policies governing employment.

End.

Adopted – BC

Draft 22
2017 05 17

Title 9. Education – Chapter 902
Child Care Department Consumer Complaint
Addendum

This chart may be used as a guide by the complaint coordinator to determine the severity of the Oneida Child Care Department complaint and recommend the appropriate complaint investigator as required by section 902.8-1 of the Child Care Department Consumer Complaint law.

LEVEL	CATEGORY	DESCRIPTION	WHO INVESTIGATES
1	Very Mild, Mild and Moderate	Complaints such as poor business practices, inadequate equipment or furnishings, inappropriate discipline, parents not notified of injury to child.	Supervisor, if not resolved through mediation with the complaint coordinator.
2	Serious	Complaints that do not pose a risk of direct harm to children, such as medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care to a child, and serious physical injury to a child or child being admitted to a hospital.	Supervisor; may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
3	Very Serious	Complaints that pose a risk of harm to children, such as gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of drugs or alcohol.	Supervisor and the Oneida Police Department. The investigation may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
4	Child Abuse or Neglect	Complaints regarding any action that results in the imminent danger to children, such as child abuse or neglect.	Supervisor, the Wisconsin Department of Children and Families, and the Oneida Police Department.



Legislative Operating Committee May 17, 2017

Children's Code

Submission Date: 9/17/14	Public Meeting: n/a
LOC Sponsor: Fawn Billie	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. The proposal seeks to develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks establishment of a Child Welfare Office and the Oneida Child Protective Board, and would address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.*

9/17/14 LOC: Motion by Fawn Billie to add the Children's Code to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously. *Note: Fawn Billie will be the sponsor for this item.*

12/17/14 LOC: Motion by Jennifer Webster to move forward with requesting a fiscal analysis; seconded by Tehassi Hill. Seconded withdraws the second, motioner withdraws the motion; motion withdrawn. Motion by Tehassi Hill to direct the Legislative Operating Committee Chair to work with the appropriate staff to develop a memorandum directing the Governmental Services Division Director to fulfill the Finance Department's request for information regarding the Children's Code in order to prepare the fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

1/28/15 OBC: Motion by Lisa Summers to direct the Law Office to create a policy statement and to request the Legislative Operating Committee consider the Children's Code a priority, seconded by Tehassi Hill. Motion carried unanimously. [under F.2. Review Tribal Member Complaint Re: Child Protective Board]

2/18/15: *Work meeting held (with Social Services.) Attendees include: Brandon Stevens, Fawn Billie, Tehassi Hill, Jessica Wallenfang, Fawn Cottrell, Taniquelle Thurner, Danelle Wilson, Michelle Mays, Rae Skenandore, Kathleen Laplant, Jennifer Kruse, Roxann Pazdera, Candice Skenandore, Lynn Franzmeier*

4/15/15 LOC: Motion by Tehassi Hill to defer the Children's Code for 60 days for the fiscal and administrative analysis; seconded by Fawn Billie. Motion carried unanimously.

6/17/15 LOC: Motion by David P. Jordan to grant the 30-day extension requests and to accept the memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

7/15/15 LOC: Motion by Fawn Billie to continue developing the Children's Code; seconded by David P. Jordan. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to approve the Children's Code memorandum and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

1/27/16 OBC: Motion by Lisa Summers to accept the update from the Legislative Operating Committee on the new Children's Code timeline, seconded by Trish King. Motion carried unanimously.

2/11/16: *Work meeting held.* Attendees include Jennifer Berg-Hargrove, Heather Lee, Michelle Mays, Patricia Garvey, Douglass McIntyre, Maureen Perkins.

- 10/7/16:** *Quarterly Sponsor Update Meeting Held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Maureen Perkins, Tani Thurner, Clorissa Santiago. Drafter (MG) was not present but updated the LRO Director before the mtg. She hopes to have a new draft in November or December 2016. Fawn will continue to update the Judiciary on this law, so they can begin to plan for a judge, admin. Staff, etc. if this is adopted.
- 12/19/16:** *Work Meeting Held.* Present: Jennifer Webster, Brandon Stevens, Jennifer Berg-Hargrove, David Jordan, Tehassi Hill, Fawn Billie, Maureen Perkins, Clorissa Santiago, Michelle Gordon, Candice Skenandore, Danelle Wilson, Heather Lee
- 1/23/17:** *Work Meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Cathy Bachhuber. Discussion surrounding implementation needs. Next steps include discussion with sponsor on adding exception in jurisdiction with blended families, discussion with Law Office about expanding jurisdiction to allow non-Oneidas to utilize the Family Court when they live on the Reservation and have Oneida parents/siblings, and set up a work meeting with ICW to begin going through Code and identifying ICW's roles and responsibilities.
- 1/23/17:** *Work Meeting w/ OFC.* Present: Hon. Marcus Zelenski, Patricia "Pixie" DeGrand, Jennifer Falck, Cathy Bachhuber, Clorissa Santiago, Candice Skenandore. Discussion surrounding implementation needs. Next steps include obtaining videoconferencing estimates, getting hearing numbers in Brown & Outagamie Counties that involve ICW and discussion with sponsor to determine if Children's Code should include court appointed counsel and juries as provided in State court.
- 2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.
- 2/23/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
Work meeting w/ ICW. Present: Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
- 3/1/17 LOC:** Motion by Fawn Billie to forward the Children's Code to the Legislative Reference Office for a legislative analysis and a fiscal impact statement, to bring back the analyses or an update by the April 5th LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 3/1/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Raeann Skenandore, Rae Skenandore, Candice Skenandore, Clorissa Santiago
- 3/3/17:** *Work meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Roxanne Pazdera, Jen Falck, Clorissa Santiago, Candice Skenandore, Rae Skenandore, Fawn Billie, Cathy Bachhuber
- 3/17/17:** *Work meeting w/ OPD.* Present: Candice Skenandore, Clorissa Santiago, Eric Boulanger, Rich Vanboxtel, Cathy Bachhuber.
- 4/5/17 LOC:** Motion by David P. Jordan to approve the public meeting packet with the noted change and forward the Child Welfare law to a public meeting to be held on May 4, 2017; seconded by Jennifer Webster. Motion carried unanimously.

Noted Change:

708.5-3. *Jurisdiction over other Matters Relating to Children.* If ~~personal~~ jurisdiction ~~over the child~~ has been established under section 708.5-1 and section 708.5-2 the Court may:

- (a) terminate parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

4/7/17: *Work meeting held.* Attendees include: George Skenandore, Danelle Wilson, Candice Skenandore, Clorissa Santiago, Jen Falck, Pat Garvey, Tehassi Hill, Jessica Wallenfang, Jennifer Webster, Brandon Stevens

4/11/17: *Work meeting w/ Child Support & ICW.* Present: Lisa Peck, Heather Lee, Rae Skenandore, Clorissa Santiago, Jen Falck, Candice Skenandore

- 4/14/17:** *Work meeting w/ DCF.* Attendees include: Heather Lee, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Jennifer Webster, Michelle Gordon, Rich VanBoxtel, Nathan King, David P. Jordan, Jen Falck, George Skenandore, Rae Skenandore, Tania Cornelius, Stephanie Lozano, Tehassi Hill, Brandon Stevens, Cathy Bachhuber
- 4/17/17:** *Work meeting held.* Attendees include: Jennifer Berg-Hargrove, David P. Jordan, Rich Vanboxtel, Jennifer Webster, Brandon Stevens, Nathan King, Ralinda Ninham-Lamberies, Heather Lee, Hon. Marcus Zelenski, Michelle Gordon, Jen Falck, Fawn Billie, Tehassi Hill, RC Metoxen, Clorissa Santiago, Candice Skenandore
- 4/19/17:** *Work meeting w/ OCPB.* Attendees include: Carol Silva, Evander Delgado, Jeanette Ninham, Wes Martin, Lois Strong, Fawn Billie, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Rae Skenandore, Tehassi Hill, David P. Jordan, Brandon Stevens, Lisa Liggins, Jo Anne House, Melinda K. Danforth
- 4/21/17:** *Work meeting w/ ICW & Trust Enrollments.* Attendees include: Cheryl Skolaski, Susan White, Robert Collins, Bonnie Pigman, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Heather Lee, Rae Skenandore, Cathy Bachhuber, Michelle Gordon
- 4/21/17:** *Work meeting w/ ICW.* Attendees include: Michelle Gordon, Fawn Billie, Jennifer Berg-Hargrove, Rae Skenandore, Cathy Bachhuber, Candice Skenandore, Clorissa Santiago, Heather Lee
- 4/21/17:** *Work meeting w/ ICW, OFC & Court Administrator.* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Berg Hargrove, Rae Skenandore, Raeann Skenandore, Heather Lee, Trina Schulyer, Fawn Billie
- 4/21/17:** *Work meeting (Presentation).* Attendees include: Candice Skenandore, Clorissa Santiago, Veronica Bruesch, Nasbah Hill, Heather Vandenlangenberg, Roxann Pazdera, Pixie DeGrand, Marcus Zelenski, Trina Schuyler, Lois Strong, Raeann Skenandore, Jodie Skenandore, Lea Padron-Plass, George Skenandore, Tsyoshaht Delgado, Heather Lee, Jennifer Berg-Hargrove, Rae Skenandore, Fawn Billie, Wes Martin
- 4/24/17:** *Work Meeting w/ OCPB.* Wes Martin, Lois Strong, Melinda K. Danforth, Evander Delgado, Jen Falck
- 5/2/17:** *Work meeting w/ ICW & Finance:* Jennifer Berg-Hargrove, Rae Skenandore, Clorissa Santiago, Candice Skenandore
- 5/3/17:** *Work meeting w/ OCPB:* Dale Powless, Wes Martin, Candice Skenandore, Clorissa Santiago, Melinda K. Danforth, Jeanette Ninham, Evander Delgado
- 5/9/17:** *Work meeting w/ ICW:* George Skenandore, Jennifer Berg-Hargrove, Heather Lee, Candice Skenandore, Clorissa Santiago, Rae Skenandore
- 5/12/17:** *Work meeting w/ LOC, OFC & ICW:* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Falck, David P. Jordan, Tehassi Hill, Fawn Billie, Jennifer Webster, Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Hon. Marcus Zelenski, Pixie DeGrand, Cathy Bachhuber, George Skenandore, Tsyoshaht C. Delgado.

Next Steps:

- Accept the public meeting comments and defer to a work meeting.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: May 17, 2017
RE: Child Welfare Law: Public Meeting Comment Review

On May 4, 2017, a public meeting was held regarding the proposed Child Welfare law (“the Law”). This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comments 1 through 2 – Name of Child Welfare law:

Wes Martin (oral): Thank you, my name is Wes Martin, and I was the original motioner on this matter back four years last January for creating a Children’s Code. And that is one of the objectives, wondering how it got to this change of the name to I think Welfare law as opposed to as it was originally intended to be a Children’s Code like other tribes – Oneida Children’s Code – and labeled that way and all of a sudden we now got a law.

Jeanette Ninham (written): Also that the Name be changed back to the Children’s Code (same as all the other tribes in WI) not as the non-tribal people would reference the Indian People.

Response

The name of the law was changed from the “Children’s Code” to the “Child Welfare law” based on the LOC’s directive that moving forward all legislation would be categorized as laws, and not codes or policies. The name “Child Welfare” was used based on the definition of welfare as, “the health, happiness, and fortunes of a person or group.” The intent of the law is to promote and improve the welfare of Oneida children and families.

The name of a particular piece of legislation is a policy determination for the LOC. The LOC could address this comment in the following ways:

1. Keep the title of this proposed law as, “Child Welfare law;”
2. Revert the title of this proposed law back to, “Children’s Code;”
3. Determine a new title.

LOC Consideration

Comments 3 through 4– General Comments and Background on the Oneida Child Protection Board’s Prior Draft:

Wes Martin (oral): I am here because I’ve been on the Oneida Child Protection Board going on seven, eight years, something like that. And now I understand this Code, I’m not opposed to that, but one of the things I am opposed to is implementation of this Code as the way it is. Over the years we have drafted, originally drafted a Code from the Child Protection Board that was presented three or four years ago. And the drafters of that Code, along with us, was Andy Pyatskowitz and Rob Orcutt, who were both tribal. Andy was a practitioner in tribal court for several tribes as a prosecutor, besides working for Oneida. Rob was instrumental, he was a practitioner for tribal court in Menominee and I believe at Stockbridge. But they were practitioners.

Jeanette Ninham (written): I have been a board member for 20 years and have seen many families come to this board for help or maybe just someone to listen. The OCPB consider this responsibility as the highest form of consciousness in building a nation of people, families and children. In May of 1997 the budget guidelines that were implemented listed the OCPB as one of the priorities of the nation. There have been other children codes wrote, one in 1983 and one submitted by Council Delgado, so the child Protection board requested to write and submit a new draft in 2008. It was determined that in Council Delgado code a lot of the information was taken from the state code chapter 48 children’s code as is this code also. The original law that was submitted by the Child Protection board in 2012 was written by 6 Elders and two Oneida attorneys.

Response

The commenters provide background on their participation with the Oneida Child Protective Board (OCPB) and the OCPB’s participation in the legislative process. The OCPB submitted a proposed Children’s Code in February 2012. The LOC reviewed the proposed Children’s Code by the OCPB and had a legislative analysis completed for April 18, 2012. At the April 18, 2012, meeting the LOC directed that the Children’s Code with analysis be forwarded to the OCPB and requested that the OCPB provide responses, concerns or suggestions in writing to be brought back before the LOC within forty-five (45) days. The record does not reflect that this action by the OCPB occurred. The LOC then later made the determination to not move forward with the OCPB’s proposed Children’s Code, and instead work on the development of a new draft. In December 2016, the LOC made the determination to move forward with the development of the current proposed Law.

The commenter also discusses the experience of the two (2) attorneys the OCPB utilized to assist in the drafting of their proposed Children’s Code. The current proposed Child Welfare law was assigned a sponsor from the Legislative Operating Committee, as well as a legislative drafting attorney and legislative analyst from the Legislative Reference Office (LRO). Additionally, the following entities were consulted in the development of the proposed Child Welfare law:

1. Oneida Law Office;
2. Oneida Family Court;
3. Indian Child Welfare Department;

4. Child Support Department;
5. Finance Department;
6. Oneida Police Department;
7. Oneida Child Protective Board;
8. Oneida Nation Judiciary;
9. Legislative Affairs Department;
10. Trust Enrollment Committee; and
11. Wisconsin Department of Children and Families.

During the development of the proposed Law fourteen (14) subject matter experts were consulted, twenty three (23) laws and documents related to child welfare issues were reviewed, twenty five (25) work meetings were held, and correspondence was sent out to six (6) Wisconsin tribes.

The research, consultation and collaboration involved in the development of this Law has led the Legislative Reference Office to believe that the law was adequately developed and the best child welfare processes and procedures are contained in the Law.

There is no recommended revision to the Law based on this comment. The commenter requests the LOC review whether the current Law was adequately developed, or if more work on the development of the Law is necessary.

LOC Consideration

Comment 5 – General Comment Regarding the Involvement and Experience of OCPB members:

Wes Martin (oral): There was other parts in it. We as the Board, have only finally got to talk with the LOC people the last two weeks over this we have as a Board. I've been a practitioner for thirty five years in tribal court. I've helped develop codes, I've helped work with a tribal judge, I was a tribal advocate, I was a tribal presenter, I was a tribal petitioner for the Ho-Chunk Nation, and knew the process in tribal court and what to do.

Response

The commenter expresses dissatisfaction with the OCPB's involvement in the development of the Law. In February of 2012, the OCPB submitted a request to create a Children's Code. The LOC reviewed the proposed Children's Code by the OCPB and had a legislative analysis completed for April 18, 2012. At the April 18, 2012, meeting the LOC directed that the Children's Code with analysis be forwarded to the OCPB and requested that the OCPB provide responses, concerns or suggestions in writing to be brought back before the LOC within forty-five (45) days. The record does not reflect that this action by the OCPB occurred. The LOC then

later made the determination to not move forward with the OCPB's proposed Children's Code, and instead work on the development of a new draft. An Oneida Law Office attorney, on behalf of the LOC, was developing a Children's Code when in December 2016 the LOC received a draft Children's Code as a writing sample. On December 19, 2016, the LOC held a work meeting to discuss this item and made the decision to reassign this piece of legislation back to an attorney and analyst in the LRO, and to merge the two drafts – the writing sample the LOC received and the current draft that was being developed – and proceed with the development of the Law.

Communication between the LOC and the OCPB has progressed as follows since the December 19, 2016, work meeting:

- On February 22, 2017, the LOC Chairperson, Brandon Stevens, contacted the OCPB informing them that the LOC is currently working on a new Children's Code as a high priority and that the OCPB will soon be receiving an invitation for a work meeting to discuss this matter;
- On February 23, 2017, the LRO Director, Jennifer Falck, provided the OCPB with options for possible times to schedule the work meeting;
- On February 24, the first draft of the current Law was included in the 3/1/17 LOC meeting packet, which was forwarded to the OCPB;
- On February 27, 2017, the OCPB requested a redline version of the proposed Law, but was informed on the same day that no redline version existed but the OCPB should feel free to contact the LRO with any questions or concerns;
- On March 3, 2017, the OCPB requested the work meeting to occur on April 10, 2017.
- The work meeting was then scheduled for April 10, 2017;
- The work meeting was canceled by the OCPB on April 10, 2017, and rescheduled for April 19, 2017;
- The work meeting was held on April 19, 2017;
- At the April 19, 2017, work meeting the OCPB was invited to attend a presentation regarding the proposed Law on April 21, 2017, to learn more about the Law and have an opportunity to ask questions and express concerns;
- LRO staff attended a work meetings with the OCPB on April 24, 2017;
- LRO staff attended a work meeting with the OCPD on May 3, 2017; and
- OCPB members were encouraged to participate in the Child Welfare law public meeting held on May 4, 2017.
- We received public comment from three (3) OCPB members.

The commenters also discuss his experience and involvement with various tribes. There is no recommended revision based on this comment.

LOC Consideration

Comments 6 through 8 – Objections to the Dissolution of the Oneida Child Protective Board:

Wes Martin (written): Oneida Child Protection Board remain in place for 2 years after implementation of the Children Code. This will give some coincidence what the OCPB was involved with for out of home placements of Oneida Children.

Julie Denny (oral): And I strongly oppose what's in there, what's being proposed right now, is the removal of the Indian Child Welfare Board. They were the only people that we could go to that would really listen to us and find out what's not happening and what should be happening, you know that could guide us, you know. We just didn't feel the trust in the beginning like we felt we should have.

I mean that's, I'm not comfortable with that and I'm not comfortable with the removal of the Indian Child Welfare Board. I think their oversight is really key, you know they can facilitate something that might be wrong and bring that to the tribal side and say this needs to be fine-tuned. I think their role is imperative. I just don't feel comfortable with them being removed from this process at all. And that's where I stand today. And I thank you for your time.

Jeanette Ninham (written): Last and finally what about all the other decisions that will need to be made in the state courts? For years the Child Protective board made the decision on where a child should be placed with and we continued to request family even when the worker had already given up.

Note: See the end of the memorandum for additional comments regarding support for the dissolution of the OCPB.

Response

The commenters express their objection to the dissolution of the OCPB, and their desire to have the OCPB remain in place for an additional two (2) years after the Law is implemented.

The OCPB was created by the Oneida Business Committee by resolution BC-09-25-81 to represent the interests of Oneida children and accept the delegation of authority and responsibility conferred on the Nation by ICWA. The creation of the OCPB was necessary because the Nation did not have an ICW Department or a Judiciary to take on the responsibility of handling child welfare cases. The OCPB has played an integral and important role in child welfare cases for the Nation, and it is because of this hard work that the Nation is at a point where it is capable of taking jurisdiction over child welfare cases.

The Nation now has the proper infrastructure in place to take the authority and responsibility over child welfare cases and adopt the Child Welfare law. The Nation's ICW Department workers, Oneida Law Office attorneys, and Family Court judge(s) are highly trained subject matter experts on child welfare issues and will ensure that placement preferences and other standards are properly followed. In addition to the ICW Department, Oneida Law Office attorneys and Family Court judges, the Nation provides guardians ad litem to the children and

allows for parents to be represented by advocates; these provisions will ensure the best interests of the child and the Nation as a whole are adequately represented.

Although it was not easy, the decision to dissolve the OCPB was made because with the implementation of the new processes and procedures contained in the Child Welfare law, it was determined that the OCPB will be providing a duplication of services and will no longer be serving an effective or efficient role. The knowledge and experience of the current members of the OCPB is an invaluable resource, but the Nation must consider not only the role the OCPB plays now, but what role and value the OCPB can provide the Nation in the future. Moving forward, the information the OCPB supplies now and will supply in the future can be provided by other departments of the Nation, such as the Trust Enrollments Department. The Trust Enrollment Department maintains accurate and complete records of enrollment and family trees. The Trust Enrollment Department will be entering into a memorandum of agreement and/or understanding with the ICW Department so that information can be shared.

The LOC believes that the implementation of the Child Welfare law, and the new process and procedures by which child welfare cases will be handled, is in the best interest of Oneida children and families. The goal of the Child Welfare law is to bring and maintain Oneida children and families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of unstable families.

For those ICWA cases that do not fall under the jurisdiction of the Law, the current ICWA policy - including the placement preferences, definition for extended family and other standards the OCPB currently operates under - will be reincorporated into a resolution requiring the Nation's Indian Child Welfare Department and Oneida Law Office attorney to ensure that the placement preferences and all standards are being followed. This allows all decisions and recommendations to be made by subject matter experts and prevents a duplication of services.

When the Oneida Law Office receives an ICWA notification they will inform the ICW Department to begin an investigation. The ICW Department will then use the placement preferences and other standards to make a recommendation for that child, and the Oneida Law Office attorney will bring that recommendation to the court hearing the child's case. The ICW Department will be entering into memorandums of agreement and/or understanding with the Trust Enrollment Committee to ensure that information can be more easily shared between the ICW Department and the Trust Enrollment Department.

In regard to the comment by Julie Denny, she additionally stated, *"I come before you today as a grandmother, whose, I'll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system," "when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn't know where they were going," and "it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan."* These comments lead to the assumption that as a grandmother who did not have placement of the grandchildren she not a party to the case she was speaking of during her oral testimony. It is important to note that due to the nature of child welfare matters, information regarding details of a case cannot be released to anyone that is not a party in the case. This would explain the inability of the ICW Department and the County Child

Protective Services department to share information with the commenter. The comments regarding OCPB being the only entity that shared information with her is a cause for concern and question, due to the fact that the OCPB is also supposed to adhere to strict confidentiality standards. More details would be necessary in order to draw a conclusion on the matter.

There is no recommended revision based on this comment.

LOC Consideration

Comments 9 through 10 – General Comments Regarding Experience and Supervision of the ICW Department :

Nesbah Hill (written): My name is Nasbah Hill and I am currently an Indian Child Welfare Social Worker. I have interned with the ICW department and worked with ICW since 2012. My family roots also stem from the Oneida community. I was also licensed to become a foster parent to take in two Oneida relative children who were in the foster care system. My perspective of the Oneida Child Welfare law is one that is reflected from the array of my different experiences-both professional and personal.

People may have experienced ICW in different ways. Some experiences may have been positive and some may have been negative. I work with the ICW team that is comprised of six exceptional workers who all have a master level education, with the exception of one worker who has a bachelor level degree with 18 years plus experience as a social worker, specifically to ICW matters. I can say with conviction that we all wear our hearts on our sleeve when it comes to the work that we do for the Oneida children and families. It is absolutely heartbreaking to see the break-up of Indian families. I have strongly advocated many times for Oneida children and families who were involved in the child welfare system, to be reunified, or to be able to stay connected to their families if possible.

Jeanette Ninham (written): There needs to be an Elder board or a board to oversee the recommendation of the workers to make sure all avenues are checked and we continue to consistently look for family and never give up. Many times this board has given family names and contacts to the workers for them to call. There needs to be checks and balances when it comes to our children and families. I am asking that an over sight team/board be put in place to hear all the decision of the attorney/Indian child welfare worker on placement of children in state courts. Some tribes have Elders placed in there ICW department.

Response

One commenter discusses the vast experience and expertise of the ICW Department, while the other commenter discusses the desire to have an Elder Board to oversee the ICW Department.

Many Children's Codes were reviewed in the development of this Law, but only one Children's Code had an entity that was similar to the OCPB. The use of a Child Protective Board or Elder

Board to supervise the ICW Department and Child Welfare attorney is an unnecessary, inefficient, and ineffective utilization of the resources of the Nation because that Board would be providing a duplication of services.

The ICW Department and the Oneida Law Office are filled with educated, experienced, child welfare subject matter experts. The Law will mandate that all placement preferences, and other standards for child welfare matters be followed by the ICW Department and the Oneida Law Office attorneys. Checks and balances are already in place within the ICW Department to ensure that its workers are complying with their mandated duties and responsibilities. Additionally, throughout the entire child welfare process, the Family Court will be reviewing if the ICW Department Workers and Nation's Child Welfare attorney are meeting the standards required by the Law.

It is unnecessary to have the OCPB or an Elders Board because now the ICW Department will enter into a memorandum of agreement and/or understanding with the Trust Enrollment Department and/or Committee to ensure that the most accurate enrollment and family information is obtained. In the past the OCPB provided information on families, but there are more and more new generations of families coming up that the OCPB is not as knowledgeable about, so it is clear the OCPB is not providing information that is not already available with the Trust Enrollment Department. In a meeting between the LRO and the OCPB, an OCPB member expressed the fact that the more experienced members of the OCPB are no longer recognizing as many family names as they once did.

There is no recommended revision because it is clear the ICW Department is qualified and experienced and does not need the supervision of the OCPB or an Elder Board. The LOC can consider whether an Elder Board is needed to supervise the ICW Department and the Nation's Child Welfare attorney.

LOC Consideration

Commenta 11 through 12 – General Comments Regarding the Law's Similarities to the Wisconsin Children's Code:

Wes Martin (oral): All I read in this one is references to the state codes, state law.

Julie Denny (written): You know I don't fully agree with implementing so much of the state's rules that they have. You know, this is our, I agree with your goals, keep our kids here.

Response

Both commenters express concern that the Law only references Wisconsin state law. The Wisconsin Children's Code was used as a reference in the development of this Law along with

other codes and laws regarding the welfare of children from various tribes, including but not limited to:

- Confederated Salish and Kootenai Tribes;
- White Earth Ojibwe;
- Ho Chunk Nation;
- Forest County Potawatomi;
- Lac du Flambeau;
- Red Cliff Band of Lake Superior Chippewa;
- Shoshone and Arapho;
- St. Croix Chippewa Indians of Wisconsin; and
- Stockbridge-Munsee.

The review of a vast variety of codes and laws regarding the welfare of children allowed for the opportunity to obtain insight and knowledge on a variety of methods and processes to handle child welfare issues so that the best processes and procedures could be developed into Oneida's Law.

Some consistency with Wisconsin law is necessary due to the nature of child welfare issues and the fact that cases have the potential to transfer between Brown County and Outagamie County and the Nation's Family Court. Consistency with Wisconsin law allows for a more fluid transfer of cases between the jurisdictions which could potentially alleviate some burden off of the families and children to adjust to their case being transferred to a different jurisdiction guided by a different law.

Although the Law does share some similarities with the Wisconsin Children's Code and other tribal Children's Codes, there are many features of the Law that make it unique to the Oneida Nation. This includes, but is not limited to, the following:

- The law requires that the child's culture, heritage and traditions are considered, respected, and encouraged. *[see Child Welfare law section 708.3-1(e), 708.8-3(b), 708.30-4, 708.37-3(b), 708.39-3(b)]*;
- The law incorporates an order of placement preferences that will help protect the best interests of Oneida children and promote the stability and security of the Oneida Nation and families. *[see Child Welfare law section 708.10]*;
- The law allows for customary adoptions, which have the purpose not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. Customary adoption does not extinguish the relationship between the child and the child's biological extended family, and even allows for biological parents to obtain certain residual rights such as the right to communication and visitation. *[see Child Welfare law section 708.39.2]*;
- The law allows for peacemaking in addition to mediation. *[see Child Welfare law section 708.43-1]*;
- It is the intent of the Governmental Services Division to include a Cultural Wellness Facilitator and Healer in the implementation of this law for the purpose of providing wellness sessions to families utilizing culturally based and appropriate and complementary healing methods, as well as providing training on Oneida culture and tradition to families, guardians ad litem, and foster homes.

Most importantly, despite what outside source the Law may resemble, the adoption of the Law is providing the Nation an opportunity to express its sovereignty and take jurisdiction over child welfare cases involving Oneida children. This will allow the Oneida Nation to set the standards and requirements for child welfare issues, allows for those cases involving Oneida children and families to be brought back to the Reservation, be processed primarily by the Oneida Indian Child Welfare Department, and heard in the Oneida Family Court. The goal of developing the Law was to bring and maintain Oneida children and their families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of unstable families.

There is no recommended revision based on these comments, but the LOC may want to consider including the role of the Cultural Wellness Facilitator and Healer in the Law. The following language could be utilized:

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) Wellness sessions utilizing culturally based and appropriate healing methods;
- (b) Training on Oneida culture, language and traditions; and
- (c) and any other service that may be necessary.

708.20-5(b) A treatment plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

- (1) Outpatient mental health treatment;
- (2) Substance abuse treatment;
- (3) Anger management;
- (4) Individual or family counseling;
- (5) Parent training and education; ~~and/or~~
- (6) Cultural wellness treatment and training; and/or
- (67) Any other treatment as deemed appropriate by the Court.

LOC Consideration

Comments 13 through 15 – General Comments Regarding Confusion:

Julie Denny (oral): Thank you. I come before you today as a grandmother, whose, I'll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system. And I agree with, wholeheartedly with what Wes has said that, I've read the draft that you guys have and I didn't understand a whole lot of what I've read.

Jeanette Ninham (written): This law is not for the lay person, it is confusing for a person with a college degree.

Nesbah Hill (written): The draft of the child welfare law is very thorough, and it shows that research was done prior to the law being written. Contributions were made by different professionals in the child welfare system.

Response

Some commenters express their concern that the Law is too confusing for the average person to read and understand, and other commenters express their appreciation for the thoroughness of the Law. It is understandable that the Law appears complicated because the Law contains very detailed standards and procedures, but that detail in the Law is necessary to provide a consistent, fair, and transparent application of the law to every member of the Nation who may come under its jurisdiction. Although it appears complicated, the detail is included for the benefit of the user. The thorough details provide the reader with clear statements regarding the expectations and responsibilities of everyone person involved in child welfare cases, and clear standards and procedures that must be followed for each case.

To combat any potential confusion regarding the Law, the LOC plans on providing community meetings to educate the public on the processes, standards and expectations contained in the Law. There has also been discussion of the possible development of a manual or guidebook for individuals that would explain to the reader, in a more concise and user-friendly manner, what the process and expectations involved in a child welfare case are and where to obtain additional information.

There are no recommended revisions to the Law based on these comments. It is for the LOC to determine what further, if any, outreach or education for the public should occur.

LOC Consideration

Comments 16 through 18 – Concerns about Prevention:

Wes Martin (oral): And the other provisions, like when you, like in the state process and doing it, and this is, NICWA will attest to it. That if you had a ladder, that ladder if you look at it, is the first thing state court's like to do is removal. And that's to take the removal out of it, and take people, and put kids out of the thing. But their theory is, and what we want is that should be the last resort. The ladder should be upside down. There should be intervention, prevention, and the removal is the last resort. There has to be emergency removal, but you know, is that, this is a Oneida Children's Code for its children. And it should be treated with that respect for the kids

and the families. Too many kids have been lost because of that removal and conditions put upon them. So I know my five minutes are up, and I appreciate.

Julie Denny (oral): But I know we're in this system but how do we get our kids back much sooner and it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan, so I think what Wes has said is really true. We need to look at more of the intervention and the removal as a last resort. And just as FYI, all of the things that have supposedly stated about my grandkids and their parents, nothing was founded, you know, but yet they're in this system. And if we're going to put this in place, that's where our strength needs to be, upfront with these parents not months down the road where okay now were going to lay out a safety plan for your kids to come back and were going to say you have to do this and that.

Jeanette Ninham (written): Line 292 ICWD duties and responsibilities, at what point will preventive services are offered? It should be first right at the top

Response

The commenters are expressing their desire for the Law to focus more on prevention and intervention before the removal of a child from the home. The commenters are correct in stating that prevention and intervention are important aspects to any child welfare case. Much information regarding prevention is not included in this Law, but that does not mean a strong focus on prevention is not occurring within the Nation. The Law does not discuss the efforts that should be made towards prevention because the Nation does not have jurisdiction under this law until there is a child in need of protection or services. When the threshold is met for a child to be in need of protection or services, you are beyond the point of only providing preventative services and action must be taken. The ICW Department does have preventative services and resources that they can provide to families before the Child Welfare law would take effect.

Additionally, the adoption of the Law would allow the Nation discretion on standards for when to screen in a case. The Wisconsin Department of Children and Families has stated that on average tribes screen in child welfare cases more frequently than the counties do. This means that the ICW department would have the authority to determine when a case should be opened, allowing the ICW Department to potentially provide greater services to more families a lot sooner. This has the potential to result in more in-home care and prevent the child welfare challenges the families are facing from escalating to the point where a child has to be removed from the home.

The purpose of the Law is to strengthen family life by assisting parents in fulfilling their responsibilities while providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, although this Law recognizes that in some circumstances it may be in the child's best interest to not be at home with his or her family. The Nation's goal and focus is always reunification of the family, even if that means the child has to be temporarily removed from the home so that the parents can focus on healing themselves and fulfilling their responsibilities.

LOC Consideration

Comments 19 through 24 – General Comments on the Implementation of this Law:

Wes Martin (oral): And I'm not threatening this board or anyone else, but unless, if this thing is trying to, I will personally do my best to do what I can because I don't think its ready to go and be implemented. I know there is time frames about implementation but I think that these things need to be corrected if it is. And I want it, I am not against the Children's Code. I want it. I've been waiting for it twenty, thirty years, but the way it is right now I think it could be a detriment to the Tribe down the road unless these other steps are taken first. Thank you.

Nesbah Hill (written): I feel that my team is very cognizant of what needs to happen in order for our department to take on this Child Welfare law. There is formality and a process that needs to happen to prepare our department for handling child protection matters. Our department is aware that while the law may be adopted sooner, it could take several years before this law is put into practice.

Melinda K. Danforth (written): Lastly, I would like to express this Law be adopted ONLY when we can state the Oneida Nation can implement it BETTER than the other counties. Shame on any Oneida Business Committee (OBC) member that approves this and an Oneida member is hindered in the process because we were NOT prepared. All we need is more negative publicity, especially if it involves our children. I appreciate the opportunity to provide my written comments. You may contact me through my personal email account if necessary.

Jeanette Ninham (written): There are many concerns with adopting and implementing this law.

Jeanette Ninham (written): I am requesting (pleading) that this law NOT be implemented until an implementation plan is in place and approved by the ICW department and the Child Protective board.

Jeanette Ninham (written): There should be an order of what is needed to make this fail proof for our children and families (plan).

Response

The commenters express their opinions on the status of the Law's development and implementation.

The philosophy behind the development of this Law has always been that this Law should only be adopted if it can provide a better service to Oneida children and families than what they are currently receiving in the county system. Due to the importance in providing a better service to Oneida children and families the LRO has had numerous work meetings with all affected entities

to discuss implementation and what infrastructure, personnel, training, and funding will be required to properly implement this Law. The LRO and the Sponsor met with the following entities:

- Oneida Family Court;
- ICW Department;
- Nation's Child Support Agency;
- Trust Enrollments Department;
- Judiciary Court Administrator;
- Community Support;
- Oneida Police Department;
- Finance Department; and
- Wisconsin Department of Children & Families.

A detailed implementation plan is currently being developed by the LOC. Implementation will begin once the Law is adopted by the Oneida Business Committee. The affected entities that require new staff for the implementation of this Law will place the required new positions into the Fiscal Year (FY) 2018 Budget. Once the budget is approved, those entities will begin hiring and training new staff. All implementation measures will need to be completed within one year after the new staff is hired with the adoption of the FY 2018 Budget, because at that time the Law will become effective and the Nation will begin exercising its jurisdiction over child welfare matters.

Some information regarding implementation contained in that plan will include:

1. ICW Department

- a. *Personnel.* The ICW department believes the following staff is needed to properly implement the Law. This chart does not include the addition of a Cultural Wellness Facilitator and Healer, and a paralegal, which the ICW Department intends to include in the implementation of this Law.

Position	Current	Needed	Total
Director	1 Family Support Services	1 ICW	1 ICW, 1 Family Support
Supervisor	1	1	1
Intake Worker (in house)	0 (does all intake duties)	1	1
Intake Worker (call 24/7)	0	2	2
On-going Worker	4	2	6
Parenting Specialist	1	1	2
Foster Care Coordinator	1	1	2
Security Officer	0	1	1

- b. *Infrastructure.* The ICW Department has reviewed space and building information to ensure they will have enough room to house all new requested staff, and has explored ways to ensure the building is safe for all families and staff. The ICW Department has also began discussions on utilizing space so that the Department can provide a safe place that can be utilized for supervised visitations.
- c. *Training.* The ICW Department recognizes that training for new and current staff will improve the quality of service they can provide to families and children. The ICW Department hopes to hire staff during the implementation time period, which would allow all staff to be properly trained before the Law becomes effective.

2. Oneida Family Court

- a. *Personnel*. The Oneida Family Court will require the following staff to properly implement this Law:

Position	Current	Needed	Total
OFC Judge	1	1	2
OFC Clerk	1	1	2
Security	1	0.5*	1.5*

*Judiciary is adding the part time security officer whether or not this Law is adopted.

- b. *Training*. The Family Court wishes to hire the new staff with enough time to allow all staff, new and current, to obtain training on child welfare matters and proceedings so that the best service can be provided to Oneida children and families. The Family Court will also be working on the recruitment of guardians ad litem and will be developing a new training for guardians ad litem specific to child welfare matters.
- c. *Infrastructure*. The Family Court believes that there are no major infrastructure needs required to implement the Law in regards to the space and Oneida Judiciary building. There are some measures to improve the building, like increased security measures and an addition of video conferencing equipment, that will assist the Family Court in providing adequate service to families and children.

Additionally, the implementation plan for the Law includes the development of various memorandums of agreement and/or understanding between the ICW Department and the following entities:

1. Trust Enrollment Committee and/or Department;
2. Oneida Police Department;
3. Nation's Child Support Agency;
4. The appropriate counties;
5. And any other appropriate department.

The implementation plan also includes the development and negotiation of 161 Agreements with the appropriate counties to discuss financial responsibilities.

There is no recommended revision based on these comments. The LOC can consider whether any other information regarding implementation is needed.

LOC Consideration

Comments 25 through 27 – General Comments on Communication between the County and the Nation:

Julie Denny (oral): And the communication that's happening between the county right now and the Tribe I think is just a big, I don't want to use the word, a big joke. A lot of miscommunication. You know, the county all through, I tried to be involved as much as I could with my kid's court hearings and stuff, and everything I hear is well it's the county's jurisdiction.

Okay then what are we, puppets on this side that we just follow what the county says because that's kinda how we felt. We felt, personally I felt, we couldn't trust anybody. I didn't trust anybody on the Oneida tribal side that was helping our kids to a degree that made them feel you know, this is gonna go okay, you know.

Nesbah Hill (written): I can attest that there are county workers who diligently follow the Indian Child Welfare Act, and are sensitive to ICW cases. They are excellent in keeping in touch with our department and include us in each step of the way with cases pertaining to Oneida children. And sometimes we experience the complete opposite, in which our input and recommendations may not be taken into consideration at all. A lot of families have sought out our department and asked why their cases can't be heard in the Oneida court or ask if they can transfer current cases into the Oneida court. To which I respond that we have a family court, however dependency matters are not heard as we do not have a children's code adopted yet. A lot of people do not understand that family matters differ from child protection matters and the court proceedings are different as well. I have seen the distrust and frustrations that Oneida families have when dealing with CPS. Child Welfare systems are complex and can prove to be exhausting once you become intertwined with child protection services. Currently, child protection matters are heard in the court of the county in which the child resides in. Families will deal with both CPS workers and ICW workers. This can be overwhelming for families during court hearings or home visits. It is a very invasive process and one that feels like you may not have any control over. There are many times that people will call the ICW department and ask for their case to be transferred to tribal court. I feel that the Oneida Child Welfare law is essential and necessary.

Jeanette Ninham (written): There have many times that a worker will not even talk with a family member, they are told go to the county. Why have they not open their doors and said come in let me see if I can help you? I knew the lady at the front desk and she said she can never find anybody there to talk to people that come in. It should not matter if the county has jurisdiction there door should have been open to make a phone call or give them some information. I have heard many times, I didn't know where to turn to or who to talk to from concern family members. Will these workers listen or even have the time to listen?

Response

The commenters describe various examples of communication between the counties and the Nation, and confusion that parents and families might experience with not knowing which worker – the county Child Protective Services worker or the ICW Department worker – to communicate with. The intention of the Law is to allow the Nation to exercise jurisdiction over child welfare matters and alleviate these communication problems.

Currently, the counties and their Child Protective Services Departments have jurisdiction over child welfare cases involving Oneida children. The county workers serve as the primary workers, with the Indian Child Welfare workers serving a supplementary role in which they collaborate and provide recommendations to the county workers. This Law will alleviate some confusion by allowing the Nation to exercise its jurisdiction over child welfare matters. This exercise of jurisdiction will allow the ICW Department workers to take a primary role, and have more

discretion and decision making power throughout the entire process. This will alleviate confusion from the families because they will only have one child welfare department and system to work with. This will hopefully make for more clear and open lines of communication between parents and the ICW Department. Communication between the ICW Department and the families is mandated by Law. The Oneida Family Court will be the body hearing these cases, and they will ensure that the ICW Department is properly communicating with the families throughout the process.

It is important to note that within the implementation of the Law the ICW Department intends to obtain an additional intake worker who would serve as an in-house worker, and be available to assist families who come into the Department requesting assistance, when all other workers are out on investigations or in court proceedings.

If improper miscommunication occurs once the Law is adopted, then families can bring any complaints to the Family Support Services Director or the ICW Department Director, the Area Manager for Education and Training, or the Government Services Division Director. The LOC can consider directing the ICW Department to develop standard operating procedures to handle complaints regarding a lack of communication.

In regard to the comment by Julie Denny, she additionally stated, *“I come before you today as a grandmother, whose, I’ll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system,” “when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn’t know where they were going,” and “it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan.”* These comments lead to the assumption that as a grandmother who did not have placement of the grandchildren she not a party to the case she was speaking of during her oral testimony. It is important to note that due to the nature of child welfare matters, information regarding details of a case cannot be released to anyone that is not a party in the case. This would explain the inability of the ICW Department and the County Child Protective Services department to share information with the commenter. The comments regarding OCPB being the only entity that shared information with her is a cause for concern and question, due to the fact that the OCPB is also supposed to adhere to strict confidentiality standards. More details would be necessary in order to draw a conclusion on the matter.

There is no recommended revision based on this comment. The LOC can determine if there are any issues surrounding communication that should be further addressed by the Law.

LOC Consideration

Comment 28 – General Comment Regarding ICWA:

Wes Martin (oral): And when you apply these stuff in tribal court you have to refer to the Indian Child Welfare. So there is a deferring to when we have dealing with the state courts, you defer to the Indian Child Welfare. It doesn't pertain to the tribe's court. We have our own set of rules and that's what we are supposed to be developing.

Response

The commenter references deferring to the Indian Child Welfare Act (ICWA), which is a federal law passed in 1978 protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. ICWA sets federal requirements that apply to state custody proceedings involving an Indian child. ICWA does not apply to cases under tribal jurisdiction. This Law develops standards and proceedings for those cases that would fall within the jurisdiction of the Nation.

There is no recommended revision based on this comment.

LOC Consideration

Comments 29 through 30 – Financial Analysis:

Wes Martin (oral): But I, and the other one is I have not seen a fiscal analysis. So whether or not, what is the cost of implementing.

Jeanette Ninham (written): To this day there is still no Financial Analysis to even know how much this is going to cost.

Response

Currently, the Oneida Finance Department is developing a thorough fiscal impact statement containing an estimate of the total fiscal year financial effects associated with legislation which includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation.

The Legislative Procedures Act states that legislation may be introduced to the LOC without a fiscal impact statement, however a fiscal impact statement shall be completed and submitted to the LOC prior to legislation being forwarded to the Oneida Business Committee for the consideration of adoption. [see *Legislative Procedures Act section 109.6-3*]. The fiscal impact statement of the Law will be completed before the LOC forwards the Law to the Oneida Business Committee.

Additionally, on April 17, 2017, the LOC and other key players attended a Child Welfare law strategy meeting in which they were briefed on all concerns regarding the development and

implementation of the Law, including potential financial impacts. During that work meeting the LOC looked seven generations ahead and made the determination that the protection of Oneida children and families and the promotion of the stability and security of Oneida families is more important than the costs associated with that protection.

LOC Consideration

Comments 31 through 32 – 161 Agreements :

Wes Martin (oral): Lola Porter, who is probably well known in Indian Country, as one of the authors and knew about tribal codes. She was with us, we had her there, she did, she has done the, how to do the 161s. We could have had that 161 agreement, I know you guys are starting to think about ohh we have to have this 161 agreement. That should have been done two years ago. Ron Hermes, who is the director of that department was willing to come up and negotiate two years ago. Yet, people who were aware of it, but nothing was done. You know, I'm just kinda frustrated that things that should have been done before this one, the foster home licensing and the 161s. And everyone thinks were going to get a lot of money out of this 161 agreement, but them are all for treatment programs, they are not for personnel. And I used to work on 161 agreements. So what I am trying to point out is that, we haven't.

Wes Martin (written): 161 Agreement with Brown and Outagamie Counties need to be in place before Implementation of the Children Code and again, this was given by Oneida Child Protection Board to person(s) working on the Code over two (2) years ago and State of Wisconsin personnel were willing to come and help with negotiation with Brown/Outagamie County on the 161 Agreement.

Response

161 Agreements clarify the relationship between a tribe and a county in providing for the health, safety and welfare of Indian children. The purpose of 161 Agreements is to allow for a county department and a tribe to enter into a written agreement regarding the circumstances in which the county department will make payments for costs of out-of-home placements of Indian children when the placement is ordered by a tribal court. 161 Agreements do not cover any personnel costs the Nation would incur.

There will be a period of time between the adoption of this law and when the law is implemented and effective during which 161 Agreements can be negotiated. The LOC and various key players involved in the development and implementation of the Law have already began creating a strategy for entering into 161 Agreements with the appropriate counties. A subcommittee has been formed and is working diligently to prepare for potential negotiations. In addition to 161 Agreements the Nation is looking to enter into memorandums of understanding and/or agreement

with the appropriate counties to detail all responsibilities, procedures and interactions not address in the 161 Agreements.

There is no recommended revision based on this comment, but the LOC can consider if the LOC wants to delay adoption of this Law until the potential 161 Agreements are in place. The LOC should be aware that the appropriate counties may not be willing to enter into negotiations for 161 Agreements without a law to reference.

LOC Consideration

Comments 33 through 37 – General Comments on Foster Homes and Foster Home Licensing:

Wes Martin (oral): What I see in here is we brought forth several things, and we believe that if this is implemented right now without this other procedural stuff in there, such as example the foster home licensing. We proposed that well before this, that should have been started and processed. There is no foster home licensing. We start with this, and all of a sudden were going to do that during the implementation. That is not something that can be developed over night.

But I truly believe that if this was implemented and gone forward without them foster home ordinance and anything else that needs to be done, is that we brought in people to help us when we do it.

Wes Martin (written): Need for Foster Home Ordinance in Place before Implementing Children Code-this was given to previous person(s) working on this Children Code over two (2) years ago by Oneida Child Protection Board.

Jeanette Ninham (written): The Licensing part was removed; you are putting the cart before the horse. To date we only have 8 foster homes and three pending. You must first have the homes and the money before you start removing children from their parents. The tribe only licenses level 2 homes, what about all the other levels of care? The counties have a scale that is used to set the pay for each child placed in the foster care/shelter care/residential placement, will we also? How will the foster care program pay the families? We have had children in group facilities for thousands of dollars per week? Are we hoping that the state and county give us money, more than what we are getting now and apply for more grants to run our Indian child Welfare department?

Right now that same child would be able to get a medical card, foster payment for her care and clothing allowance should she need clothes from the county departments are we able to handle all of this? The Child Protective Board was paying for one child out of our budget (with the

approval of the treasure office) and the foster parent was receiving 1,114.00 per month (one child).

Jeanette Ninham (written): Why are we passing a law, when we have no foster home to take care of these children? Are we going to turn around and pay the county to keep our children in non-tribal homes? The foster care department needs to identify policy and practice barriers to foster parent recruitment and retention, including licensing requirements and inter-agency relationships.

Response

At this time the Child Welfare law does not include provisions on foster home licensing standards or procedure. Currently, the Nation has the ability to license up to level two (2) foster homes. The Nation is the only tribe that has the ability to license foster homes both on and off the reservation. The Nation has the ability to license foster homes both on and off the reservation because the Nation licenses homes under Wisconsin standards. If the Nation were to change the standards by which they license foster homes so that the standards deviate from the Wisconsin standards then the Nation would lose the ability to license foster homes off the reservation. The Nation currently utilizes county resources, and county foster homes and treatment facilities are used since the Nation does not have the ability to license those particular homes.

The commenter is correct in stating that the Nation is in need of more foster homes, but the need for more foster homes is an issue that is plaguing communities everywhere across the United States. The development and implementation of a foster home licensing law will not guarantee the availability of more foster homes. The ICW Department has expressed the fact that it is not that they are turning away homes that do not meet the Wisconsin standards for licensing, it is that we do not have enough homes volunteering to serve as foster homes in the first place.

The ICW Department has the intent to include another Foster Care Coordinator in the implementation of this Law for the purpose of increased recruitment of more foster homes.

The Nation intends to utilize Oneida foster homes when available, but due to the lack of available homes, and the fact that the Nation can only license up to level two (2) homes, the needs of the Nation cannot be met solely by Oneida foster homes. The Nation has the intent to enter into 161 Agreements and memorandums of agreement and/or understanding with the appropriate counties for the use of foster homes, shelter care facilities, and treatment facilities that the Nation does not currently have and cannot currently license.

Although the utilization of non-Oneida foster homes is necessary the Law contains an order of placement preferences that prioritizes the child being placed with family or members of the Nation before being placed in a foster home. *[see Child Welfare law section 708.10]*. Additionally, the potential Cultural Wellness Facilitator and Healer will also be available to provide training on traditions and culture to those non-Oneida foster homes off the reservation.

Since the Nation licenses foster homes under the Wisconsin standards, the Nation will follow the current payment scale the counties use for the payment of foster homes the Nation provides. The

Nation will be entering discussions and negotiations with the appropriate counties regarding 161 Agreements and what costs associated with child welfare issues the Nation will be responsible for and what costs the counties will be responsible for. The costs discussed in the 161 Agreements will cover foster homes, shelter care, and treatment facilities. Negotiations for 161 Agreements have not yet occurred so it has not been determined who which entity – the county or the Nation – will be responsible for each specific cost. Research has shown that often the tribe will be responsible for providing payment to families for kinship care, and the county will provide payment for foster homes. This is not a guarantee of what could result from a 161 Agreement, but it does illustrates current trends and provide some insight on possible outcomes.

Additionally, there is a High Cost Fund Pool available to assist in the payment of the most expensive treatment facilities that the Nation will have the opportunity to utilize.

The ICW Department will also be available to refer families to services so that they can receive assistance for their needs.

Although the question regarding whether a law governing foster home licensing should be developed has already been brought to the LOC's attention and the LOC made the decision to continue using Wisconsin standards at this time, the LOC could consider whether a law governing foster care licensing standards should be developed prior to the implementation of this Law.

LOC Consideration

Jeanette Ninham (written): How are we making sure they are not lost in the system or adopted out to non-tribal families? We continue to see over and over again that non-tribal foster families want to keep our Indian babies.

Response

The commenter expresses concern that non-tribal foster homes will keep Oneida children, and wants to ensure that this does not occur. The Law addresses this issue by codifying the order of placement preferences in sections 708.10-1 and 708.10-2, stated as follows:

708.10. Order of Placement Preferences

708.10-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;**
- (b) A family clan member;**
- (c) A member of the Nation;**

- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.10-2. The order of placement preferences listed in section 708.10-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.10-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.10-1(h).

The Law also requires a six (6) month review of the permanency plan which will include a review of where the child is currently placed, the goals of the permanency plan, the continuing necessity for and the safety and appropriateness of the placement, and the progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child. The following portion of the Law states this requirement:

708.21-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and if found to be in need of protection or services.

708.21-4. After the hearing, the Court shall enter a written order addressing the following:

- (a) The continuing necessity for and the safety and appropriateness of the placement;
- (b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;
- (c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);
- (d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;
- (e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;
- (f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);
- (g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and
- (h) The date of the next review hearing, if appropriate.

There is no recommended revision based on this comment. The LOC can consider whether or not the Law appropriately ensures that Oneida children and families will remain preserved.

LOC Consideration

Comment 38 – Order of Placement Preferences:

708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

(1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;

(2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; or

(3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.10-1.

(b) The party requesting to deviate from the placement preferences listed in 708.10-1 has the burden of establishing good cause.

Michelle L. Gordon (written): 708.10-3 discusses deviation from placement preferences for good cause. A list is given and that list appears to be exhaustive. In other words, the Court may only consider 1, 2, and 3. I believe that limits the court and there may be other reasons to deviate. I think the court should be allowed to state other reasons to deviate within their discretion. This can always be appealed, but there may be circumstances other than what fits in the 3 options given that would allow for good cause to deviate.

Response

The following revision is recommended:

708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

(1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;

(2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; ~~or~~

(3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.10-1; ~~or~~

(4) Any other reason deemed by the Court to be in the best interest of the child.

- (b) The party requesting to deviate from the placement preferences listed in 708.10-1 has the burden of establishing good cause.

The LOC can consider whether or not to include the recommended revision.

LOC Consideration

Comment 39 through 40 – Consent Decree :

Wes Martin (oral): When we met with the LOC we made recommendations as an example was like a pre-trial meeting, and people if they can come together, the parents and whoever else, ICW, can do a consent decree, and work on a consent decree. A consent decree is the form of a contract, or whatever, that certain things will be done by the parents, certain things will be provided to them, whatever, and if they agree to do it the incident or whatever goes away as if it never happened.

Wes Martin (written): Consent Decree Agreements.

Response

After meeting with the OCPB, the ICW Department, and reviewing the comment above, the LOC may want to consider the inclusion of language regarding consent decrees in the Law.

The following language is recommended:

708.17-1. Consent Decree

708.17-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.16 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.17-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

- (a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;
- (b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.17-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.17-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree extend the decree for up to an additional six (6) months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.17-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

LOC Consideration

Comment 41 – Customary Adoption:

Wes Martin (written): Customary Adoptions in the Oneida Children Code.

Response

Based on the recommendation from the former Deputy Director of National Indian Child Welfare Association (NICWA), the LRO contacted Anita Fineday, the managing director of the Indian Child Welfare Program for the Casey Family Programs and recent appointee to the federal commission: Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act. Anita Fineday provided various tribal language samples regarding customary adoption. With her

guidance, and review of other tribal codes and laws regarding customary adoption we created the customary adoption section found in the Law. [see *Child Welfare law section 708.39-2*].

There is no recommended revision based on this comment. The LOC may review the section of the Law regarding customary adoptions and determine if any changes or revisions are necessary.

LOC Consideration

Comment 42 – General Comment Regarding Roles, Procedures and Responsibilities Described in Law:

Julie Denny (written): We have young parents that are in the system, you know its not somebody of my age that getting my kids taken away. Its young adult parents, and they don't know anything about what they've gotten themselves into or how to get out you know, other than you told them to do all this and all that and you do it and ohh you don't get your kids back. And I keep reminding my kids, even though I don't feel removal was justifiable, but that's not for me to determine, but remember that day August 22 when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn't know where they were going. So our process that we have in place really needs to be, really needs to be identified – roles, responsibilities, communications, all that has to happen. I mean these families' sprits are broken, and how do we bring them back as a family and make them feel you weren't the worst parents, that shouldn't have never truly happened. I'm sure there are cases where emergency removal is justifiable but you know, we really need to be strong and if we're going to move forward with this and we got our ducks in order on this side.

Response

The Law provides a thorough and detailed explanation of all the roles, procedures, and responsibilities so that parents, whether they be young or old, are aware of all the expectations that will be placed upon them. Additionally, the goal of the ICW Department is to provide families assistance in meeting any conditions that are placed on them so that reunification with their child can occur sooner. The Law mandates this assistance be provided.

The commenter also discusses the fact that often in child welfare cases the family's spirits are broken. The Governmental Services Division intends to obtain a Cultural Wellness Facilitator and Healer to assist in solving this issue. The Cultural Wellness Facilitator will be able to provide families with culturally based healing methods to assist the families with healing and growth.

There are no recommended revisions based on this comment. It is a policy determination for the LOC to decide if language referencing the Cultural Wellness Facilitator and Healer should be included in the Law.

LOC Consideration

Comment 43 – Scope:

708.4-3. The Nation shall intervene in all ICWA/WICWA cases involving a child that is enrolled or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as determined by the Department.

Michelle L. Gordon (written): 708.4-3 at line 202 states that the Nation shall intervene in all ICWA cases. This should be clarified by stating except those that the Nation chooses to take jurisdiction over. Cases may start in State court and therefore make it an ICWA case, but in some cases we will move to transfer and take jurisdiction, but in others we may just intervene. Just a suggestion to clarify.

Response

It is recommended that section 708.4-3 be removed from the Law because this information will be incorporated into a resolution that address the standards and procedures for address an child welfare case that does not fall under the jurisdiction of the Nation and will instead be governed by ICWA.

The LOC can consider whether this section should remain in the Law or if the section should be removed to a resolution that address how ICWA cases will be handled by the Nation.

LOC Consideration

Comment 44 – Parental Objection to Transfer of Case to Oneida Judiciary:

Wes Martin (written): Right for Parents to objection to transfer of case to Oneida Judiciary.

Response

The parental objection to the transfer of a case to a tribal judiciary is allowed under the Indian Child Welfare Act (ICWA). ICWA provides:

25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

Additionally, it is the intent of the ICW Department to meet with each effected family prior to the implementation of this Law to discuss the status of their case, whether or not transfer will be sought when the Law becomes effective, and whether the parents object to that transfer.

There is no recommended revision based on this comment.

LOC Consideration

Comments 45 through 46– General Comment Regarding Jurisdiction:

Julie Denny (written): You know, jurisdiction, what does that all mean. Is the county, how much is the county involved and will they release their, their jurisdiction back to the Tribe?

Nesbah Hill (written): By putting this law into place would allow for the tribe to take jurisdiction over Oneida children and have child protection cases heard into our own tribal court. Our department has the educational background and expertise to handle these matters. This legislation would protect Oneida children by allowing the tribe to take full jurisdiction over child protection cases and hear them into tribal court.

Response

The Nation will be expressing its sovereignty and exercising jurisdiction over child welfare matters. The Indian Child Welfare Act (ICWA) allows tribes to take jurisdiction over these matters, as illustrated by the following provision:

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation

of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

The Law addresses jurisdiction in section 708.5. The Law will have the authority to take jurisdiction over all children enrolled or eligible for enrollment in Brown and Outagamie County that are in need of protection or services. Additionally, the Law allows for the Nation to take jurisdiction over non-Oneida children in need of protection and services if ALL of the following conditions are met:

1. The non-Oneida child is a sibling of a child enrolled or eligible for enrollment in the Nation;
2. The non-Oneida child is present and resides within the boundaries of the Reservation; and
3. The Court receives consent from the non-Oneida child's parent(s).

This provision allowing the Nation to take jurisdiction over a child that is not enrolled or eligible for enrollment was added to the law to allow sibling groups to remain together.

The Law also allows for the Nation to transfer a case it has jurisdiction over to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer is in the best interest of the child, allowing flexibility for the Nation's Judiciary. The Law also allows a case to transfer from a court of competent jurisdiction to the Oneida Family Court so long as personal and subject matter jurisdiction are established.

There is no recommended revision based on this comment.

LOC Consideration

Comment 47 – Jurisdiction – Sibling Exception:

Jeanette Ninham (written): Will the tribe be responsible for all the children in the home, we have many blended families and can the tribe carry the cost to place all the children in our foster homes?

Response

The Law allows for the Nation to take jurisdiction over non-Oneida children in need of protection and services if ALL of the following conditions are met:

4. The non-Oneida child is a sibling of a child enrolled or eligible for enrollment in the Nation;
5. The non-Oneida child is present and resides within the boundaries of the Reservation; and
6. The Court receives consent from the non-Oneida child's parent(s).

This provision allowing the Nation to take jurisdiction over a child that is not enrolled or eligible for enrollment was added to the law to allow sibling groups to remain together. The LOC made the determination that it is a priority to keep sibling groups together throughout child welfare proceedings.

Additionally, the Law allows the Nation to transfer a case to another court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child. This could be utilized if the sibling group's needs could be better served in a different court.

LOC Consideration

Comment 48 – General Comment Regarding Responsibilities of ICW Department:

Melinda K. Danforth (written): First of all, I want to express that my comments regarding this Law are from my perspective as an Oneida member that has gone through the Brown County Ongoing Child Protection Services (CPS) and the Oneida Nations Indian Child Welfare (ICW). Secondly, I highly agree that we are in need of a Law where the Oneida Judicial system will have the legal jurisdiction over the child who is alleged to be in need of protection or services, and jurisdiction over other matters relating to the child. Although I do not feel the Law is ready to be adopted. It is being rushed without looking at all avenues in the best welfare and protection of the Oneida children (see reasons noted below).

Within the past two (2) years of having temporary placement of my grandchildren to now being their legal guardian I need to share the following concerns of what I experienced, especially since ALL duties and responsibilities will then be on the ICW workers taking over all Brown County and Outagamie County cases:

1. As indicated the plan is to hire 4 to 5 more staff in this area. This is seriously an underestimated amount of staff needed to take care of ALL cases. The current ICW staff are not involved in all the activities that the Brown County CPS staff are:
 - a. Monthly house visits-ICW came to first initial visit when I had to pick up my grandsons from their mothers house. ICW then came to my house the 2nd time over a year later. CPS came every month.
 - b. Monthly Parent house visits-ICW went to maybe 2 of my grandson's mother house visits. CPS supervised or sent an Intern to attend/supervise the visits.
 - c. Parent (Father) Involvement-ICW met my son once during a family meeting. CPS extended/reached out a few times and asked that I share what he needs to do.
 - d. Weekly Parent (Mother) visits-ICW wasn't in attendance when I dropped my grandchildren off. CPS had to be at each supervised visit.
 - e. Health-ICW never asked if the boys are caught up on their shots, dental or doctor appoints. CPS contacted me almost monthly if they had their annual physicals, caught up with shots, going to dental, etc.

Response

The commenter expresses her experience with both the Brown County Child Protection Services (CPS) and the Oneida Nations Indian Child Welfare Department. The commenter expresses concern that the ICW Department will not have enough staff to properly handle all cases. The commenter then goes on to describe ICW and CPS's involvement in her specific case. It is important to note that currently the county CPS workers are the primary workers assigned to the case, and the ICW Department workers serve a supplementary role. This means that the ICW workers are not the workers that are required to complete home visits. This explains why the ICW Department workers were not present at every home visit like the CPS workers were in the commenter's case. With the adoption of this Law the ICW Department workers will be taking over this responsibility.

Currently, Brown County has intake workers that average twelve (12) to fifteen (15) cases each, and on-going workers that average eighteen (18) to twenty-two (22) cases each, which the ICW Department has twelve (12) families per on-going worker, and one (1) intake worker who has twenty-two (22) open investigations. With the additional staff included in the implementation of this Law, it is estimated that each on-going worker would have about eight (8) cases and the intake workers would have about seven (7) cases each. This is a significantly lighter case load than the county workers. A lighter case load will allow the ICW Department more time to dedicate to thorough investigations, and more time to commit to providing services and attention to families to facilitate the families in meeting their conditions and reunifying with their children. This will also allow the ICW Department to have more focus on providing the community preventative services.

In addition to a lighter workload, the ICW Department intends to obtain a paralegal during the implementation of this Law. The addition of a paralegal to the ICW Department will allow the paralegal to focus on all legal documentation and reporting instead of the ICW Department workers so that the ICW Department workers can focus more on providing services to families.

There is no recommended revision based on this comment. The LOC can consider whether the ICW Department's plan to increase its staff is appropriate or whether more staff should be included.

LOC Consideration

Comment 49 – General Comment Regarding Parental Visits:

Melinda K. Danforth (written): 2. Supervised visits (house) -it has to be strict where ONLY the parent is allowed at these visits. Other members of the family or friends should not be allowed to be involved in these. Defeats the purpose of the parent to parent.

Response

The commenter expresses concern surrounding visitation between parents and children and whether or not extended family should be involved in the visitation.

The purpose of the Law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit. The ultimate goal in every child welfare case is the reunification of the child with his or her parents. The preservation of the family unit includes the preservation of the child's relationship with his or her extended family.

The Law only allows for visitation with extended family when it is in the best interest of the child. Details regarding the placement of the child, visitation and communication will be determined in the permanency plan that is created by the ICW Department and approved by the Family Court.

Additionally, the ICW Department is beginning to explore the possibility of providing a service for supervised visitations between a parent and child so that the visitations can occur in a safe and nurturing environment for the families and children. The addition of another parenting specialist could allow this service to be provided to families in a manner that would not only support the families, but also provide the families with parenting services and guidance at the same time.

There is no recommended revision based on this comment.

LOC Consideration

Comment 50 – General Comment Regarding Harassment:

Melinda K. Danforth (written): Parental Harassment-many times I've experienced outbursts from my grandson's mother and nothing was ever done. She was allowed to constantly verbally and socially harass me and my family. There needs to be some strict rules on this when there is written proof of such.

Response

Any harassment by a party to a case should be immediately reported to the Family Court Judge. The addition of a Cultural Wellness Facilitator and Healer will provide all parties to a case the opportunity to obtain a service that will focus on culturally appropriate healing and wellness. A better focus on the cultural and spiritual healing of all parties involved in child welfare matters may lead to the prevention of harassment.

There is no recommended revision based on this comment. The LOC can consider whether the role of the Cultural Wellness Facilitator and Healer should be included in the Law. The LOC can also consider if harassment should be further addressed in the Law.

LOC Consideration

Comment 51 – General Comment Regarding Training and Education:

Melinda K. Danforth (written): Training/Educating-Not once has either CPS or ICW mentioned to me how to help my grandsons through their emotional trauma. They felt abandoned repeatedly by both parents the past 2 years. It isn't easy as a grandmother to see them hurt and I don't know what to say to them other than show them and tell them how much love they have from me and my family. ICW must educate the person taking in any child because it is a life-changing event for some.

Response

The ICW Department will now be the primary case worker assigned to child welfare matters involving Oneida children and families that fall under the jurisdiction of this Law. This means that the ICW worker must ensure that the proper services are provided to each family. Additionally, the Cultural Wellness Facilitator and Healer will be utilized to assist children and their families who are suffering from emotional trauma due to the child welfare matters.

There is no recommended revision based on this comment. The LOC can determine whether or not more consideration is necessary for this comment.

LOC Consideration

Comments 52 through 54 – Indian Child Welfare Department Duties and Responsibilities – Memorandum of Agreement and/or Understanding:

708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law.

Bonnie Pigman (oral): Good afternoon. I have two items, excuse me, I am speaking on behalf of the Trust Enrollment Department. And on lines 336 or 337 I would like for that to be changed to read as, “enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department” not Committee, Department.

Susan White (written): The Trust Enrollment Department is requesting consideration in allowing the following change to be made: Lines 336/337 change to read as follows: (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department, Oneida....”

Response

The following revision is recommended to allow flexibility on whether the memorandum of agreement and/or understanding will be with the Trust Enrollment Committee or Trust Enrollment Department:

708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law;

The LOC can make one (1) of the following determinations:

1. Include the recommended revision;
2. Leave the statement as “Oneida Trust Enrollment Committee;” or
3. Revise the statement to say “Oneida Trust Enrollment Department.”

LOC Consideration

Melinda K. Danforth (written): I recommend including a Memorandum of Agreement or Understanding with the Oneida Nation School System when it comes to truancy or family issues.

Response

The commenter expresses the desire for the ICW Department to enter into a memorandum of agreement or understanding with the Oneida Nation School System for truancy or family issues but does not state a clear purpose for that memorandum of agreement or understanding.

Truancy, and other issues related to juveniles in need of protection or services (JIPS), are not covered or included in the proposed Law. Previously, the LOC made the determination for the Law to focus on children in need of protection and services (CHIPS) and to not include JIPS at this time with the understanding that in the future a law regarding JIPS may be developed. In order for the Nation to develop and implement a law governing JIPS additional resources and infrastructure would be needed, such as a secure detention facility specifically for juveniles.

The Law does allow for the ICW Department to enter into memorandums of understanding and/or agreement with any appropriate department in order to carry out the provisions of this law, as stated in section 708.7-2(e).

708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law.

The LOC can make the following policy determinations:

1. Determine if, and when, any legislation regarding JIPS should be developed or if it should be a provision added to the Law. With no secure detention facility for juveniles, this is not advisable.
2. Determine if the ICW Department and the Oneida Nation School System should be required to enter into a memorandum of understanding and/or agreement.

LOC Consideration

Comment 55 – General Comment Regarding Timelines Contained in Law:

708.33-2. A petition for the termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;**
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child;**
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or**
- (d) Grounds for an involuntary termination of parental rights do not exist.**

Jeanette Ninham (written): This has been found to be very difficult for our families to get there children back and fulfill all the conditions required of them in the timeline given. The timeline 18/22 should be moved out longer or include extensions.

Response

I believe the commenter is referencing the Wisconsin requirement that a petition to terminate parental rights must be filed if the child has been placed outside his or her home for fifteen (15) of the last twenty-two (22) months, and expressing the opinion that this is not enough time for a parent to work towards reunification with their child. *[see Wis. Stat. 48.417(1)(a)]*.

The Law contains a similar provision, but is clear that the petition for the termination of parental rights does not have to be followed in the exceptions described in section 708.33-2(a)-(d) are met.

Additionally, it is important to note that the Nation's goal is the preservation of the family unit and reunification of the child with the parents. The ICW workers will provide services to families and assist the families in ensuring any conditions places on them are satisfied in a timely manner so that reunification with the child can occur. The Law requires the ICW Department and its workers to be responsible for making reasonable efforts to obtain necessary services for the child and family, and for identifying and referring parties to resources in the community calculated to resolve the problems presented in the various child welfare petitions. *[see Child Welfare law section 708.7-1(i), 708.7-2(a)]*.

There is no recommended revision based on this comment, but the LOC can consider the adequacy of the timelines contained under the Law and whether the timelines should be revised.

LOC Consideration

Comments 56 through 57– Requests for Medical History:

708.13. Discovery and Records

708.13-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.13-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.13-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.13-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.13-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

Jeanette Ninham (written): Many of our children are coming from FASD Fetal Alcohol Syndrome Disorder, heroin and Opioid addition from their mothers. It is very important that under line 1637 all the information be shared of the parent history of mental state, psychiatric, psychological, and therapeutic and what will/can be hereditary so this can be shared with the grandparents/foster/adopt family.

Melinda K. Danforth (written): Parent Mental/Health-there needs to be immediate enforcement of allowing the person(s) know of any mental/health history of both parents. If there are taking in any child they should know if there are possible hereditary or life-threatening family history illnesses.

Response

The Law allows for an individual to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law. *[see Child Welfare law section 708.13]*. If a party's request for documents is denied then the party is allowed to request the Court to compel the discovery, as long as the discovery does not contain confidential or privileged information.

Additionally, the Department's disposition report contains a social history of the child and family which is the social, economic, cultural and familial aspects of a person and how those aspects affect the person's functioning and situation in life. *[see Child Welfare law section 708.19-1(a)]*. The permanency plan will include all appropriate information deemed necessary by the Court, which could include relevant medical conditions. *[see Child Welfare law section 708.21-1(j)]*.

The Department's termination of parental rights report contains the social history of the child and family, including any relevant medical conditions. *[see Child Welfare law section 708.36-1(a)]*.

There is not recommended revision based on this comment. The LOC can consider whether the social history report contained in the disposition report should contain relevant medical conditions as specified in the termination of parental rights report. The LOC can address this issue in two ways.

1. The LOC can determine it is not required to state that relevant medical conditions should be included in the social history report of the disposition report, and if that information is not in the report then the parties are able to use the discovery methods provided in section 708.13 of the Law.
2. The LOC can determine that the social history included in the disposition report should specifically state any relevant medical conditions, as stated in the termination of parental rights report. The following revision could be made to accomplish this:

708.19-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy to the parties at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;

LOC Consideration

Comment 58 – Oneida Business Committee Accountability:

Jeanette Ninham (written): I am also requesting should something happen to any of our children or families that this committee be accountable and held responsible to correct whatever needs to be fixed.

Response

Many individuals, departments, and experts have been involved in the development of this Law, not just the LOC. Every avenue has been taken to ensure the quality of the law and that the implementation will be properly handled. Like all new developments, we cannot guarantee that some hiccups or unforeseen circumstances will not occur, but it is important to note that if there are any issues that arise the Legislative Procedures Act allows for a law to be amended and for any interested person to submit a written request for amendments for legislation. *[see Legislative Procedures Act section 109.5]*.

There is no recommended revision based on this comment. The LOC may consider whether the LOC should be held accountable and responsible if something happens to a child or family.

LOC Consideration

Comment 59 – Definition for ICWA :

(z) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families.

Michelle L. Gordon (written): Line 122 defines ICWA. The cite for ICWA should be given.

Response

The commenter suggests adding the citation for the Indian Child Welfare Act (ICWA) in the definition. The following revision is recommended:

(g) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families as codified at 25 USC 1901.

The LOC can consider whether to include the revised definition of ICWA in the Law.

LOC Consideration

Comment 60 – Definition for Reasonable Efforts:

(g) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

Michelle L. Gordon (written): Line 166 defines Reasonable Efforts. In ICWA cases county agencies are required to provide Active Efforts. While I’m aware we are not bound by ICWA, discussions amongst agencies have determined that is best practice to provide all families with Active Efforts, not just Native families. Therefore, it is my suggestion that we use and define active efforts as best practice and to set the bar amongst agencies.

Response

Active efforts is a requirement of the Indian Child Welfare Act (ICWA) and ICWA does not apply to cases that fall under tribal jurisdiction. Active efforts are used in ICWA to ensure that there is an “ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe, and that uses the available resources of the Indian child’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian child caregivers, and other culturally appropriate service providers.” [see Wis. Stat. 48.028(4)(g)]. Throughout the Law references are made to social and cultural values, conditions and way of life, and the purpose of developing this Law was to ensure that customs and traditions of the Nation are acknowledged when raising an Oneida child. The Law also directly utilizes the resources of the Nation. Therefore, it is recommended that “reasonable effort” remain in the law instead of “active effort.”

It is a policy determination for the LOC to decide whether reasonable or active efforts should be used in the Law.

LOC Consideration

Comment 61 – Definition for Stipulation:

(g) “Stipulation” means an agreement to do something.

Michelle L. Gordon (written): Line 183 defines Stipulation, but is not a very “legal” definition. I suggest amending it to “An agreement concerning the rights and/or obligations of the parties.”

Response

The commenter suggests revising the definition for stipulation. The following revision is recommended:

(g) “Stipulation” means a formal legal acknowledgement and an agreement made between opposing parties prior to a pending hearing or trial ~~to do something.~~

The LOC can consider whether to include the revised definition for stipulation in the Law.

LOC Consideration

Comment 62 – Definition for WICWA:

(g) “WICWA” means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law.

Michelle L. Gordon (written): Line 195 defines WICWA. The cite for WICWA should be given.

Response

The commenter suggests adding the citation for the Wisconsin Indian Child Welfare Act (WICWA) in the definition. The following revision is recommended:

(g) “WICWA” means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law as codified in Wis. Stat. 48.028.

The LOC can consider whether to include the revised definition for WICWA in the Law.

LOC Consideration

Comment 63 – Appointment of Guardian ad Litem:

708.8-1. Appointment. The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

Michelle L. Gordon (written): 708.8-1 at line 339 states “may appoint” a GAL. A GAL should be appointed in all cases. Suggest changing this to “shall”.

Response

The term “may” was used instead of the term “shall” to provide the Court flexibility and discretion on when to appoint a guardian ad litem for a child who is the subject of a child in need of protection and services proceeding. There may be some instances, like if a case is not contested by any party, or during the permanency review hearings that occur every six (6) month, in which the Court would determine it is not necessary to appoint a guardian ad litem.

The Law further clarifies that the Court is required to appoint a guardian ad litem appointed for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding [see *Child Welfare law section 708.8-1(b)*], and for a minor parent petitioning for the voluntary termination of their parental rights [see *Child Welfare law section 708.8-1(c)*].

It is a policy determination for the LOC to decide whether to provide the Court flexibility and discretion when deciding when it is appropriate to appoint a guardian ad litem or to require the Court to appoint a guardian ad litem for every case in which the child is the subject of a child in need of protection and services proceeding. The LOC can address the comment in the following ways:

1. The LOC can determine that the language should stay as it is currently drafted and provide the Court flexibility and discretion on when to appoint a guardian ad litem for a child who is the subject of a child in need of protection and services proceeding.
2. The LOC can determine that the Court should be required to appoint a guardian ad litem for every proceeding in which a child is in need of protection or services, and make the following revision:

The Court ~~may~~ shall appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

LOC Consideration

Comment 64 – Qualifications for a Guardian ad Litem:

708.8-2. Qualifications

- (b) No person shall be appointed guardian ad litem in that proceeding who is:**
- (1) an interested party;**
 - (2) appearing as counsel in the proceeding on behalf of any party; or**
 - (3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonable interpreted as a conflict of interest.**

Michelle L. Gordon (written): 708.8-2(b)(1) at line 357 uses the terminology “interested party”. However, this terminology is not defined. This can be a vague term unless defined. It is my suggestion that a definition be provided.

Response

A definition for the term “interested party” is not included in the Law because the term is used in its everyday and normal sense, meaning an individual who has an interest in the case or proceeding.

The LOC can address the comment in the following ways:

1. The LOC can decide to leave the Law as written and not include a definition for “interested party” because the term is used in its everyday and ordinary sense.
2. The LOC can decide to include a definition for “interested party” and include the following revision in the law:

(bb) “Interested party” means an individual that has a recognizable interest in the matter.

LOC Consideration

Comment 65 – Compensation of a Guardians Ad Litem:

708.8-2. Qualifications.

- (a) A guardian ad litem shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is currently certified as a guardian ad litem and in good standing;
 - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who is:
 - (1) an interested party;
 - (2) appearing as counsel in the proceeding on behalf of any party; or
 - (3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
 - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
 - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-4. Compensation. The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

Jeanette Ninham (written): This law also talks about GALS, and the court only has a few and they are also used for the child support cases. I am a GAL and I know that I sure do a lot more work than the state GAL's. I go to the home and see who is all in the home and talk to the families for hours at a time. I check medical history of the children and school records. I have never seen a state GAL do this. I would like to ask that the cost for the GAL service be increased to the same as the state.

Response

In Wisconsin a guardian ad litem (GAL) must be an attorney admitted to practice in the state of Wisconsin. [see Wis. Stat. 767.407(3)]. Wisconsin law allows for a GAL to be compensated at a rate that the court determines is reasonable. [see Wis. Stat. 767.407(6)].

The Law does not require a GAL to be an licensed attorney, and allows a lay person to serve as a GAL as long as they meet the limited requirements described in section 708.8-2 of the Law. The Law states that the GAL shall be compensated at a rate that the Court determines is reasonable. [see Child Welfare law section 708.8-4].

Currently, the Family Court compensates a GAL at the rate of twenty-five (25) dollars per hour, which is a high rate for a lay GAL. The Family Court does not collect GAL fees as a collection process has not been established, there is limited staff to handle the collection of GAL fees, and many families cannot afford to pay the GAL fees. Since GAL fees are not collected from the parties, fees are paid out to the GALs through the Family Court budget. An increase of the Oneida GAL fees to the rate paid by other courts will have a significant impact on the Family Court's budget.

It is a policy determination for the LOC to decide if the Court should determine the rate guardians ad litem are compensated at, if that rate should be determined by some other mechanism, or if the LOC would like to set the rate at which GALs will be compensated.

LOC Consideration

Comment 66 – Taking a Child into Custody:

708.14-6. Holding a Child in Custody. A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;

- (e) A licensed private or public shelter care facility; or
- (f) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

Michelle L. Gordon (written): 708.14-6 is Holding a Child in Custody. Subsection (f) states the child can be placed in the home of a person not a relative for no more than 30 days. However, subsection (b) lists foster home, which would likely be a non-relative. Does the 30 days referred to in (f) apply to (b). This should be clarified.

Response

Section 708.14-6(b) references a licensed foster home while section 708.14-6(f) references an unlicensed home. The following revision is recommended for clarification:

708.14-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A licensed foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;
- (e) A licensed private or public shelter care facility; or
- (f) The home of a person not a relative or a non-licensed foster home, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

The LOC can consider whether to include the recommended revision for clarification purposes.

LOC Consideration

Comments 67 through 68 – Emergency Custody Hearing:

708.15-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.

Michelle L. Gordon (written): 708.15-4 states that a copy of the petition should be provided to the child if 12 or older. In State courts this is because they are provided with their own counsel to represent them, not a GAL. But I do not see in our law that we are providing counsel to this age group. This should be clarified and also goes back to my comment 6. GAL's should be appointed in all cases, specifically if we are not providing counsel. Then, in this case, the GAL would receive a copy of the petition and explain it to their ward.

Response

Throughout the Law a child who is aged twelve (12) years or older:

- can sign the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide [*see Child Welfare law section 708.5-2(j)*];
- can request that good cause be found to go outside the placement preferences required in section 708.10 of the Law [*see Child Welfare law section 708.10-3(a)(1)*];
- must be notified by the Indian Child Welfare Worker of the date, time, and place and the nature and possible outcomes of an emergency custody hearing [*see Child Welfare law section 708.14-10*];
- must receive from the Court a copy of the petition for the emergency custody hearing prior to the hearing [*see Child Welfare law section 708.15-4*]; and
- must receive from the Court a copy of the dispositional order [*see Child Welfare law section 708.20-7*].

The law recognizes that a child aged twelve (12) years or older can be more involved in their child welfare case, and should be kept knowledgeable on what is happening, and can even make requests of the Court in some circumstances. The requirement to provide a child aged twelve (12) years or older with a copy of court documents does not negate the guardian ad litem's responsibility to explain the court proceedings to the child, if a guardian ad litem is appointed for that specific hearing. [*see Child Welfare law section 708.8-3(d)*]. The Court will use its discretion to determine when it is necessary and appropriate to appoint a guardian ad litem for a child in accordance with section 708.8-1 of the Law.

The commenter is correct in stating that the Law does not require counsel to be provided to children, or any other party involved in a child welfare matter.

The LOC can consider whether the requirement that a child aged twelve (12) or older be provided certain court documents remain in the Law.

LOC Consideration

708.15-9. An order to hold a child in custody may be re-heard if, in the Court's discretion, good cause is found, whether or not counsel was present.

Michelle L. Gordon (written): 708.15-9 at line 615 states that an order may be re-heard if good cause is found. But re-heard based on what; someone's motion? How does it come before the court to be re-heard. This should be clarified.

Response

The following revision is recommended:

708.15-9. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

The LOC may consider including the recommended revision clarifying how an order is re-heard in the Law.

LOC Consideration

Comment 69 – Petition for a Child in Need of Protection or Services:

708.16-4. A petition may be amended at any time at the discretion of the Court.

Michelle L. Gordon (written): 708.16-4 at line 647 states that a petition may be amended at any time, but does not speak to service upon all parties. A sentence should be added regarding the required service upon all the parties.

Response

The Law does address the fact that petitions for a child in need of protection or service may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. [see *Child Welfare law section 708.11-1*].

The following revision is recommended for clarity:

708.16-4. A petition may be amended at any time at the discretion of the Court. An amended petition may be given to the parties directly by the Nation's Child Welfare attorney or the Indian

Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

The LOC can consider including the recommended revision clarifying that all amended petitions should be served upon all the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

LOC Consideration

Comment 70 – Plea Hearing for a Child in Need of Protection or Services:

708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;**
- (b) Establish whether any promises or threats were made to elicit the plea or admission; and**
- (c) Make inquiries that establish a factual basis for the plea or admission.**

Michelle L. Gordon (written): 708.17-4. Discusses admission or plea of no contest. Subsection (a) at line 657 states “the plea or admission”. It should clarify, and state “the plea of no contest or admission”.

Response

The LOC can address this comment in two ways:

1. The LOC can decide to keep the Law as written since section 708.17-4 is clear that the plea referenced in this section is a “plea of no contest,” even if the following subsections then state simply “plea.”
2. The LOC can clarify the matter with the following revision:

708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;**
- (b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and**

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

LOC Consideration

Comment 71 – Dispositional Hearing for a Child in Need of Protection and Services:

708.20-4. *Dispositional Orders.* The Court’s dispositional order shall be in writing and shall contain:

(d) If the child is placed outside the home of his or her parent, guardian, or legal custodian, a designation of the amount of child support, if any, to be paid;

Michelle L. Gordon (written): Line 779 as part of the dispositional order has the court ordering an amount for child support. However, elsewhere in the law this is forwarded to child support and the court handling child support to deal with that issue. It is usually handled as a separate matter and I suggest it should remain separate. I suggest deleting 708.20-5(d).

Response

It is recommended that section 708.23-5(d) be removed from the Law. Through conversations with the ICW Department, the Nation’s Child Support Agency, and the Family Court, it has been determined that child welfare issues will be kept separate from child support issues and the relationship between the two matters will be handled internally. The LOC can consider whether they would like to remove this section from the Law.

LOC Consideration

Comment 72 – Change in Placement:

708.22-1. The Department, the Nation’s Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order.

708.22-4. The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.

Michelle L. Gordon (written): Line 906 which is 708.22-1 states a request for change in placement may be made, but doesn’t say how; such as by motion. I suggest such language be placed in this section. Look also at 708.22-4 regarding this same concern (line 918)

Response

The following revision is recommended:

708.22-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

~~708.22-4. The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.~~

The LOC can consider whether to include the recommended revision clarifying that a change in placement is requested by filing a motion with the Court.

LOC Consideration

Comment 73 – Revision of Dispositional Orders:

708.24-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

Michelle L. Gordon (written): 708.23-3 at Line 972 states that a hearing on revision for dispositional orders is if new information is available. But this should also include a hearing shall be held if a party objects to the revised dispositional orders. The parties should be given due process to be heard and object to any potential revisions.

Response

The commenter references the incorrect citation for the section of the Law that discusses revisions of dispositional orders, so section 708.24-3 will be referenced in this response.

The commenter states that a hearing should be held if any party objects to a revised dispositional order, and not just when new information is available, but the commenter is misinterpreting this section because the revision of a dispositional order will only occur when there is new information available. A party, or the Court, may request a revision in the dispositional order that does not involve a change in placement. *[see Child Welfare law section 708.24-1]*. A request for a change in placement is governed by section 708.22 of the Law. The request for the revision must state the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. *[see Child Welfare law section 708.24-2]*. The Court will hold a hearing on the matter if the request indicates that new information is available that

affects the advisability of the Court's dispositional order. *[see Child Welfare law section 708.24-3]*. If there is not new information then a hearing will not be held, and the Court will not consider the revision. The only other way the Court will consider a revision is if the parties file a stipulation and the Court approves, but then the parties would be in agreement and there would be no objections to the revision. *[see Child Welfare law section 708.24-3]*.

There is no recommended revisions based on this comment.

LOC Consideration

Comments 74 through 75 – Guardianship for Certain Children in Need of Protection or Services:

Michelle L. Gordon (written): 708.26 regarding Guardianship; I may have missed it, but I don't see anything regarding the appointment of a GAL on these, or that the appointment of the GAL from the CHIPS shall carryover to the guardianship proceeding. A GAL should be appointed to provide recommendations to the court on the child's best interests. It is my suggestion that the same GAL carryover to the guardianship action.

Response

The requirement of a guardian ad litem to carry on from the CHIPS proceeding to the guardianship proceeding would be a challenging provision to include in the law due to the fact that a guardian ad litem might not be willing or able to accept the case in the guardianship proceeding. The Law does already require that the Court appoint a guardian ad litem for a child who is the subject of a contested guardianship proceeding.

708.8-1(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, ***and for a child who is the subject of a contested guardianship proceeding;***

There is no recommended revision based on this comment.

LOC Consideration

Michelle L. Gordon (written): Another comment on the guardianship section, is that the proposed guardian should be present at all hearings, and that the child's presence may be waived by the court.

Response

The Law already states that the child's presence may be waived by the Court, as stated by the following:

708.12-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

It is a policy determination for the LOC to decide if the proposed guardian should be present at all hearings. The LOC can address this policy determination in two ways.

1. The LOC can determine that it is not necessary for the Law to require the proposed guardian to be present at all hearings and leave the Law as written.
2. The LOC can determine it is necessary for the Law to require the proposed guardian to be present at all hearings and make the following revision to the Law:

708.27-4. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

LOC Consideration

Comments 76 through 77 – Contempt:

708.31-6(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

Michelle L. Gordon (written): Line 1213, 708.30-6 (c) allows the court to find a party in contempt if they don't comply with the agreement. First it should cite the law where the contempt provisions are found; stating "pursuant to ____." Second, after the last word in the sentence, "contempt", the following or something similar should be added; "and any subsequent relevant orders to amend the agreement as necessary if there is a continuing refusal to abide by the agreement." The court could also send them back to peacemaking.

708.42-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition,

attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

Michelle L. Gordon (written): 708.41-3. Same comments as comment 19. *[Comment 19 was “Line 1213, 708.30-6 (c) allows the court to find a party in contempt if they don’t comply with the agreement. First it should cite the law where the contempt provisions are found; stating “pursuant to _____.” Second, after the last word in the sentence, “contempt”, the following or something similar should be added; “and any subsequent relevant orders to amend the agreement as necessary if there is a continuing refusal to abide by the agreement.” The court could also send them back to peacemaking.”].*

Response

In discussing that an individual may be found in contempt for non-compliance with an agreement the commenter references the incorrect citation for the section of the Law that discusses the voluntary termination of parental rights, so section 708.31-6(c) will be referenced in this response. The commenter also references the incorrect citation for the section of the Law that discusses the voluntary termination of parental rights, so section 708.42-3 will be referenced in this response.

The following revision is recommended:

708.31. Voluntary Termination of Parental Rights

708.31-6. The parties may agree to attend peacemaking to establish an agreement regarding post-voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary termination contact agreement; however, the parties may return to peacekeeping to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.42. Non-Compliance with a Residual Rights Agreement

708.42-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.42-4. The Court may not revoke a termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement. However, the parties may return to peacekeeping to revise the agreement, or the Court may amend an order if it finds an amendment to an order is in the best interests of the child.

The LOC can consider whether the recommended revisions should be included in the Law.

LOC Consideration

Comment 78 – Adoption:

Michelle L. Gordon (written): Adoptions at 708.38. I did not see a provision in there for the handling of step-parent adoptions. If we are going to be handling voluntary TPR's and mention step-parent adoptions, there should be provisions for step-parent adoptions. This should be added to the law.

Response

Step-parent adoptions are already included under this Law and will be processed through the same adoption proceeding as any other adoption. The Law states that a child may be adopted if the person filing a petition for adoption is the spouse of the child's parent and the child's other parent is deceased or the parental rights of the child's other parent with respect to the child have been terminated. [see *Child Welfare law section 708.40-1(d)*]. Additionally, the Law clarifies that a spouse, if the other spouse is the parent of the child, is eligible to adopt a child who falls under the jurisdiction of this law. [see *Child Welfare law section 708.40-2(b)*]. Step-parent adoptions would follow the procedure that is set out in section 708.41 of the Law.

The LOC may consider if step-parent adoptions are adequately addressed in the Law.

LOC Consideration

Comments 79 through 80 – Adoption:

708.39-2(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable;

708.39-3(d) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority.

Bonnie Pigman (oral): Second item is, the law references children obtaining information about their family upon reaching age eighteen when those children have been adopted out. The law should direct the individuals to access the Court or the ICW files. So I think those pieces are missing. That's it, thank you.

Susan White (written): When children go back to find family they should have access to court or ICW records to assist them. The law references children obtaining information about their family upon reaching age 18 when those children have been adopted. The law should direct those individuals to access the court or ICW file.

Response

The commenters recommend clarifying that an individual should be directed to the Court or ICW Department files if looking to obtain information on their biological family. The following revisions are recommended:

708.39-2(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The child may obtain this information from files maintained by the Court or Department;

708.39-3(~~d~~e) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The child may obtain this information from files maintained by the Court or Department.

The LOC can consider whether or not to include the recommended revision.

LOC Consideration

Title 7. Children, Elders and Family - Chapter 708

CHILD WELFARE

Latiksa>sh&ha laotilihw@-ke laotiyanl^hsla>

children's welfare law

708.1.	Purpose and Policy	708.24.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.25.	Extension of Dispositional Orders
708.3.	Definitions	708.26.	Continuation of Dispositional Orders
708.4.	Scope	708.27.	Guardianship for Certain Children in Need of Protection or Services
708.5.	Jurisdiction	708.28.	Revisions of Guardianship Order
708.6.	Nation's Child Welfare Attorney	708.29.	Termination of Guardianship
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.30.	Termination of Parental Rights
708.8.	Guardian ad litem	708.31.	Voluntary Termination of Parental Rights
708.9.	Advocate	708.32.	Grounds for Involuntary Termination of Parental Rights
708.10.	Order of Placement Preferences	708.33.	Petition for Termination of Parental Rights
708.11.	Notice of Petition	708.34.	Initial Hearing on the Termination of Parental Rights Petition
708.12.	Hearings (General)	708.35.	Fact Finding Hearing for a Termination of Parental Rights
708.13.	Discovery and Records	708.36.	Department's Termination of Parental Rights Report
708.14.	Taking a Child into Custody	708.37.	Standards and Factors
708.15.	Emergency Custody Hearing	708.38.	Dispositional Hearings for Termination of Parental Rights
708.16.	Petition for a Child in Need of Protection or Services	708.39.	Adoption
708.17.	Plea Hearing for a Child in Need of Protection or Services	708.40.	Adoption Criteria and Eligibility
708.18.	Fact-finding Hearing for a Child in Need of Protection or Services	708.41.	Adoption Procedure
708.19.	Department's Disposition Report for a Child in Need of Protection or Services	708.42.	Non-Compliance with a Residual Rights Agreement
708.20.	Dispositional Hearing for a Child in Need of Protection or Services	708.43.	Peacemaking and Mediation
708.21.	Permanency Plans	708.44.	Appeals
708.22.	Change in Placement	708.45.	Liability
708.23.	Trial Reunification		

- 1
- 2 **708.1. Purpose and Policy**
- 3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
- 4 Oneida children through the preservation of the family unit, while recognizing that in some
- 5 circumstances it may be in the child's best interest to not be reunited with his or her family.
- 6 Furthermore, this law strengthens family life by assisting parents in fulfilling their
- 7 responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the
- 8 Nation and acknowledging the customs and traditions of the Nation when raising an Oneida
- 9 child.
- 10 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for
- 11 conducting judicial proceedings and other procedures in which children and all other interested
- 12 parties are provided fair hearings in addition to ensuring their legal rights are recognized and
- 13 enforced, while protecting the public safety.
- 14
- 15 **708.2. Adoption, Amendment, Repeal**
- 16 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-
- 17 __.
- 18 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
- 19 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
- 20 Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law or law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12-10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Abuse" means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) "Advocate" means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.
- (d) "Attorney" means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) "Best interest of the child" means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;

- 67 (4) Receive appropriate medical care;
68 (5) Receive appropriate education;
69 (6) Be raised in conditions which maximize the chances of the child becoming a
70 contributing member of society; and
71 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
72 and heritage(s).
- 73 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
74 holidays recognized by the Nation.
- 75 (g) "Child" means a person who is less than eighteen (18) years of age.
- 76 (h) "Clear and convincing evidence" means that a particular fact is substantially more
77 likely than not to be true.
- 78 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
79 or advisor to a party.
- 80 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Judiciary
81 that has the designated responsibility to oversee family matters.
- 82 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction
83 and authority to do a certain act or hear a certain dispute.
- 84 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 85 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 86 (n) "Dispositional hearing" means a hearing for the Court to make its final
87 determination of a case or issue.
- 88 (o) "Emotional damage" means harm to a child's psychological or intellectual
89 functioning evidenced by one (1) or more of the following characteristics exhibited to a
90 severe degree:
- 91 (1) anxiety;
92 (2) depression;
93 (3) withdrawal;
94 (4) outward aggressive behavior; and/or
95 (5) a substantial and observable change in behavior, emotional response, or
96 cognition that is not within the normal range for the child's age and stage of
97 development.
- 98 (p) "Expert" means a person with special training, experience, or expertise in a field
99 beyond the knowledge of an ordinary person.
- 100 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
101 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
102 nephew, first, second, third or fourth cousin, or stepparent.
- 103 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
104 a petition under this law are proved by clear and convincing evidence.
- 105 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
106 at issue, have an emotional tie to that parent wherein they are like family.
- 107 (t) "Foster home" means any home which is licensed by Department and/or applicable
108 licensing agency and maintained by any individual(s) suitable for placement of children
109 when taken into custody or pending court matters.
- 110 (u) "Good cause" means adequate or substantial grounds or reason to take a certain
111 action, or to fail to take an action.

(v) “Group home” means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families.

(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law.

(bb) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(cc) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(dd) “Nation” means the Oneida Nation.

(ee) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(ff) “Parent” means the biological or adoptive parent of a child.

(gg) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(hh) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(ii) “Physical injury” includes, but is not limited to, any of the following:

(1) lacerations;

(2) fractured bones;

(3) burns;

- (4) internal injuries;
- (5) severe or frequent bruising;
- (6) bodily injury which creates a substantial risk of death;
- (7) bodily injury which causes serious permanent disfigurement;
- (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
- (9) any other serious bodily injury.
- (jj) "Plea hearing" means a hearing to determine whether any party wishes to contest a petition filed under this law.
- (kk) "Probable cause" means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.
- (ll) "Reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.
- (mm) "Relative" means any person connected with a child by blood, marriage or adoption.
- (nn) "Reservation" means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (oo) "Shelter care facility" means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.
- (pp) "Social history" means the social, economic, cultural and familial aspects of a person and how those aspects affect the person's functioning and situation in life.
- (qq) "Special treatment or care" means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.
- (rr) "Stepparent" means the spouse or ex-spouse of a child's parent who is not a biological parent of the child.
- (ss) "Stipulation" means an agreement to do something.
- (tt) "Substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.
- (uu) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.
- (vv) "Treatment plan" means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.
- (ww) "Warrant" means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.
- (xx) "WICWA" means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.4-3. The Nation shall intervene in all ICWA/WICWA cases involving a child that is enrolled or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as determined by the Department.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child's parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation's laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent or guardian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation's laws or state law;

- (i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (k) has a parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (l) has a parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;
- (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and section 708.5-2 the Court may:

- (a) terminate parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

- (a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or
- (c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues; and
- (s) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological therapeutic, counseling and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;
- (d) Adhere to the placement preference order stated in section 708.10; and

- (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law;
- (f) Share information with other social service and law enforcement agencies; and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- (a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;
- (b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;
- (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and
- (d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
- (1) is at least twenty one (21) years of age;
 - (2) is currently certified as a guardian ad litem and in good standing;
 - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who is:
- (1) an interested party;
 - (2) appearing as counsel in the proceeding on behalf of any party; or
 - (3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonable interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
- (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
 - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, teachers and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;
- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;

- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regard the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. Qualifications.

- (a) An advocate shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is admitted to practice before the Oneida Judiciary;
 - (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10. Order of Placement Preferences

708.10-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.10-2. The order of placement preferences listed in section 708.10-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.10-1(a) and the

least amount of preference given to a child placed in a home in accordance with section 708.10-1(h).

708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

(1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;

(2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; or

(3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.10-1.

(b) The party requesting to deviate from the placement preferences listed in 708.10-1 has the burden of establishing good cause.

708.11. Notice of Petition

708.11-1. Petitions alleging that a child is in need of protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.11-2. Petitions for termination of parental rights, guardianship, and adoption shall be served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.11-3. All parties shall be notified of all subsequent hearings under this law by first-class mail to the recently verified last-known address of the party with the purpose of providing the parties an opportunity to be heard.

708.12. Hearings (General)

708.12-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.12-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.12-3. If an alleged father appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.12-4. At any time the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.13. Discovery and Records

708.13-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.13-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.13-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.13-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.13-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14. Taking a Child into Custody

708.14-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

(a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;

(b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or

(c) The child has violated the conditions of an order issued pursuant to this law.

708.14-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.14-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.14-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.14-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

(a) The child will cause injury to himself or herself or be subject to injury by others;

(b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;

(c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.14-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.14-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;

(b) A foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility; or

(f) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.14-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.10-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.14-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.14-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.14-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.15. Emergency Custody Hearing

708.15-1. If a child who has been taken into custody under section 708.14-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.14-5(a)-(e) shall be conducted by Court as soon as possible but no later than seventy-two (72) hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.16 shall be filed unless the Department seeks and receives an extension pursuant to section 708.15-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.15-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.15-3. The Court may grant a one-time extension under section 708.15-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody.

708.15-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.

708.15-5. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.15-6. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.15-7. All orders to hold a child in custody shall be in writing and shall include all of the following:

- (a) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;

(c) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interest are the paramount concerns;

(d) The Department made reasonable efforts to make it possible for the child to return safely home; and

(e) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

708.15-8. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.15-9. An order to hold a child in custody may be re-heard if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.16. Petition for a Child in Need of Protection or Services

708.16-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true.

708.16-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.16-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.16-4. A petition may be amended at any time at the discretion of the Court.

708.17. Plea Hearing for a Child in Need of Protection or Services

708.17-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.17-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.19, the Court may proceed immediately with the dispositional hearing.

708.17-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;
- (b) Establish whether any promises or threats were made to elicit the plea or admission; and
- (c) Make inquiries that establish a factual basis for the plea or admission.

708.18. Fact finding Hearing for a Child in Need of Protection or Services

708.18-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.18-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.18-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.19, the Court may proceed immediately with the dispositional hearing.

708.19. Department's Disposition Report for a Child in Need of Protection or Services

708.19-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy to the parties at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.19-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.19-3. The Department may request the Court to withhold identifying information from the child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.20. Dispositional Hearing for a Child in Need of Protection or Services

708.20-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.20-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.10-1, the Department shall present as evidence specific information showing all of the following:

- (a) That continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.20-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.10-1.

708.20-4. *Dispositional Orders.* The Court's dispositional order shall be in writing and shall contain:

(a) The treatment plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home of his or her parent, guardian, or legal custodian, a designation of the amount of child support, if any, to be paid;

(e) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child;

(f) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(g) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(h) A statement of the conditions with which the parties are required to comply; and

(i) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.20-5. *Treatment Plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or treatment plan determined by the Court to be necessary for the child's welfare.

(a) The treatment plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a treatment plan does not guarantee the return of a child and that completion of a treatment plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A treatment plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

- (1) Outpatient mental health treatment;
- (2) Substance abuse treatment;
- (3) Anger management;
- (4) Individual or family counseling;
- (5) Parent training and education; and/or
- (6) Any other treatment as deemed appropriate by the Court.

708.20-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.20-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, other parties to the action, and the child if the child is age twelve (12) or older.

708.20-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.21. Permanency Plans

708.21-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services. The permanency plan shall include all of the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (c) The date on which the child was removed from the home;
- (d) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (e) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (f) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (g) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (h) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (i) Information about the child's education; and

(j) Any other appropriate information as deemed necessary by the Court or the Department.

708.21-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.21-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and if found to be in need of protection or services.

(a) At least five (5) business days before the date of the hearing, the Department shall provide a copy of the updated permanency plan to the Court and the parties.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.21-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

708.22. Change in Placement

708.22-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order.

708.22-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.22-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.22-4. The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.

708.22-5. Written notice of the proposed change in placement shall be sent to all of the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.22-6. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.22-7. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. Notice of the emergency change in placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.22-8. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.22-9. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.22-10. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.23. Trial Reunification

708.23-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.22.

708.23-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.23-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.22-7.

708.23-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court and shall provide the parent, guardian, legal custodian and any other party written notice pursuant to the Oneida Judiciary Rules of Civil Procedure. The notice shall contain the information that is required to be included in the request under section 708.23-2.

708.23-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Department or the Court shall provide notice of the hearing to all parties with a request for the trial reunification attached to the notice.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.23-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.23-8. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than ten (10) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Department or the Court shall provide notice of the hearing to all parties with a copy of the extension request attached.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.23-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his out-of-home placement the Department shall provide notice of the following:

(1) the date of the return of the child to the out-of-home placement; and

(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.22 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.22 to place the child in the trial reunification home.

708.23-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties. The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and

(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.22 apply to a change in placement requested under this subdivision, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.22-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing together with a copy of the request for the revocation, to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.23-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.24. Revision of Dispositional Orders

708.24-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.24-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.24-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.24-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.25. Extension of Dispositional Orders

708.25-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.25-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.25-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.25-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan.

708.25-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.26. Continuation of Dispositional Orders

708.26-1. If a petition for termination of parental rights or guardianship is filed or an appeal from a termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.27. Guardianship for Certain Children in Need of Protection or Services

708.27-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.27-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

(a) The child;

(b) The child's guardian ad litem;

(c) The child's parent;

(d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;

(e) The Department; or

(f) The Nation's Child Welfare attorney.

708.27-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-1(a)-(f) are met.

708.27-4. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.27-5. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.27-6. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.27-1(a)-(f). The Department shall file its report with the Court prior to the fact-finding hearing and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.27-7. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.27-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.27-8. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child.

708.27-9. *Disposition Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.26-10. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.28. Revisions of Guardianship Order

708.28-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.28-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that

affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. The Department shall file its report with the Court prior to the hearing on the revision of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.28-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.29. Termination of Guardianship

708.28-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

708.29-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.27-1(a)-(f). The Department shall file its report with the Court prior to the hearing on the termination of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.29-3. Any person authorized to file a petition under for guardianship may request that a appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.29-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.30. Termination of Parental Rights

708.30-1. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed with termination of parental rights.

708.30-2. The Court may terminate a parent's rights on a voluntary or involuntary basis.

708.30-3. An order terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are terminated and the child.

(a) An order terminating parental rights does not affect a child's relationship with the child's extended biological family unless the Court expressly finds that it is in the child's best interest to terminate the child's relationship with his or her extended biological family.

708.30-4. The termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.31. Voluntary Termination of Parental Rights

708.31-1. The Court may terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.36, the Court may proceed immediately to a dispositional hearing.

708.31-2. The Court may accept a voluntary consent to termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.31-3. If in any proceeding to terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the termination of their parental rights, the Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights.

708.31-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights.

708.31-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.31-6. The parties may agree to attend peacemaking to establish an agreement regarding post-voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary termination contact agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary termination contact agreement.

708.32. Grounds for Involuntary Termination of Parental Rights

708.32-1. Grounds for termination of parental rights shall be any of the following:

(a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.32-1(a)(1)(D) and 708.32-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.32-1(a)(1)(D) and 708.32-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.32-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment.* Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services.* Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.20-7;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the nine (9) month period following the termination of parental rights fact-finding hearing.

(d) *Continuing Parental Disability.* Continuing parental disability shall be established by proving that:

- (1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;
- (2) The condition of the parent is likely to continue indefinitely; and
- (3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

- (1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.20-7, Wis. Stat. 48.356 (2), or Wis. Stat. 938.356 (2); and
- (2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

- (1) That the parent has caused death or injury to a child resulting in a felony conviction; or
- (2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

- (A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;
- (B) Whether the person has neglected or refused to provide care or support for the child; and
- (C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.051 involving any child if committed in this state.

(3) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

(i) First degree intentional homicide [under Wis. Stat. 940.01];

- (ii) First degree reckless homicide [under Wis. Stat. 940.02];
- (iii) Felony murder [under Wis. Stat. 940.03];
- (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or
- (v) A violation of the law of any other state or federal law, if that violation would be a violation of the above mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

- (i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];
- (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];
- (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];
- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual exploration of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];
- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(l) *Prior Involuntary Termination of Parental Rights of Another Child.* Prior involuntary termination of parental rights to another child shall be established by proving all of the following:

- (1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and
- (2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.32-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.32-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

708.33. Petition for Termination of Parental Rights

708.33-1. *Who May File a Petition for Termination of Parental Rights.* A petition for termination of parental rights shall be filed by the Nation's Child Welfare attorney, the Department, or the child's parent in the case of a step-parent adoption.

708.33-2. A petition for the termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or
- (d) Grounds for an involuntary termination of parental rights do not exist.

708.33-3. A petition for the termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
 - (1) A statement that consent will be given to voluntary termination of parental rights as provided in section 708.31; or
 - (2) A statement of the grounds for involuntary termination of parental rights under section 708.32 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.33-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for termination of parental rights or issues an order terminating parental rights.

708.33-5. The petitioner shall ensure the summons and petition are served upon the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure:

- (a) The parent(s) of the child, including an alleged father if paternity has not been established;
- (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and

(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.

708.34. Initial Hearing on the Termination of Parental Rights Petition

708.34-1. The initial hearing on the petition to terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.34-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.34-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

708.35. Fact Finding Hearing for a Termination of Parental Rights

708.35-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the termination of parental rights.

708.35-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.35-3. If grounds for the termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.36. Department's Termination of Parental Rights Report

708.36-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.37-2 and 708.37-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of guardian for the child.

708.36-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.37. Standards and Factors

708.37-1. In making a decision about the appropriate disposition for termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.37-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all termination of parental rights proceedings.

708.37-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

- (a) The likelihood of the child's adoption after termination;
- (b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);
- (c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;
- (d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (e) The wishes of the child;
- (f) The duration of the separation of the parent from the child; and
- (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.38. Dispositional Hearings for Termination of Parental Rights

708.38-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.38-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the termination of parental rights or if the Court finds that a parent is attempting to

voluntarily terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order terminating the parental rights of one or both parents.

708.38-3. If the rights of both parents, or of the only living parent, are terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.10-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.38-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the termination of parental rights is in the best interests of the child.

708.38-5. If an order is entered to terminate a parent's rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground(s) for termination of parental rights specified in section 708.32.

708.38-6. If the Court terminates parental rights, the Department, or the Court if the Department is not a party to the action, shall forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.38-7. If only one parent consents for a voluntary termination of parental rights or if the grounds for involuntary termination of parental rights are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent if the Court finds such termination to be in the best interest of the child.

708.39. Adoption

708.39-1. Adoptions under this law shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

708.39-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable;

(c) Adoption shall not prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been terminated, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the child and the child's extended biological family. The child's extended biological family retains the right to reasonable communication and visitation with the child, subject to reasonable controls of the adoptive parents.

708.39-3. *Closed Adoptions.* Closed adoptions occur in situations where a child needs a permanent home and it is necessary to sever all ties between the child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The child's biological family shall not be entitled to or have access to any information regarding said child;

- (d) The child shall be entitled to information and knowledge regarding his or her culture and heritage; and
(d) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority.

708.40. Adoption Criteria and Eligibility

708.40-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the following criteria are met:

- (a) Both of the child's parents are deceased;
- (b) The parental rights of both of the child's parents with respect to the child have been terminated;
- (c) The parental rights of one of the child's parents with respect to the child have been terminated and the child's other parent is deceased; or
- (d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:
 - (1) The child's other parent is deceased; or
 - (2) The parental rights of the child's other parent with respect to the child have been terminated.

708.40-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

- (a) A married adult couple;
- (b) Either spouse if the other spouse is a parent of the child; or
- (c) An unmarried adult.

708.40-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.41. Adoption Procedure

708.41-1. *Petition for Adoption.* A person proposing to adopt shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the petitioner;
- (b) The name, birth date, address, and tribal affiliation of the child;
- (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
- (d) The name by which the child shall be known if the petition is granted;
- (e) The relationship of the petitioner to the child; and
- (f) A copy of the order terminating parental rights of the child's biological parent(s).

708.41-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.41-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The Court shall order one (1) of the following to conduct the investigation:

(a) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(b) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

708.41-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.41-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.41-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.41-7. If after the hearing and a study of the report required by section 708.41-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.41-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.41-9. After entry of the order granting the adoption, the Department shall promptly mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.42. Non-Compliance with a Residual Rights Agreement

708.42-1. Any party to a residual rights agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.42-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.42-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.42-4. The Court may not revoke a termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement.

708.43. Peacemaking and Mediation

708.43-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.44. Appeals

708.44-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

708.45. Liability

708.45-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

End.

Adopted – BC-_____



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Child Welfare Law**

Business Committee Conference Room-2nd Floor Norbert Hill Center
May 4, 2017 12:15 p.m.

Present: Fawn Billie, David P. Jordan, Brandon Stevens, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Jen Falck, Dale Powless, Wes Martin, Carol Silva, Heather Lee, Jennifer Berg-Hargrove, Bonnie Pigman, Cathy Bachhuber, Rob Collins, Christina Danforth, Jessica Wallenfang, Jodie Skenandore, Julie Denny, Jeanette Ninham, Tsyoshaaht C. Delgado, Veronica Bruesch, Nabash Hill, Roxann Pazdera, Heather Vandenlangerberg, Lea Padron-Plass.

Fawn Billie : Good afternoon. The time is 12:15 p.m. and today's date is Thursday, May 4, 2017. I will now call the public meeting for the Child Welfare law to order.

The Legislative Operating Committee is hosting the public meeting to gather feedback from the community regarding this legislative proposal. The public meeting is not a question and answer period.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room.

Written comments may be submitted to the Tribal Secretary's Office or the Legislative Reference Office in person, by U.S. mail, inter-office mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday, May 11, 2017.

In attendance from the LOC is myself, Fawn Billie, and David Jordan.

We will begin today's public meeting for the Child Welfare law. This is a proposal to create a new Child Welfare Law which would allow the Nation to exercise jurisdiction over its children who are in need of protection or services.

The goal of the proposed law is to ensure that child welfare cases involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved.

The goal of the proposed Child Welfare law is to bring and maintain Oneida children and their families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of unstable families.

The proposed Child Welfare law extensively details the roles and responsibilities of those entities involved in child welfare cases and the processes which will be followed by the Nation's Family Court.

The LOC may impose a time limit for all speakers pursuant to Section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of five (5) minutes. The time limit shall be applied equally to all persons.

And I have the sign in sheet, did anybody miss the sign in sheet that still would like to be allowed to speak? Okay, so at this time we will call up Wes Martin.

Wes Martin: Thank you, my name is Wes Martin, and I was the original motioner on this matter back four years last January for creating a Children's Code. And that is one of the objectives, wondering how it got to this change of the name to I think Welfare law as opposed to as it was originally intended to be a Children's Code like other tribes – Oneida Children's Code – and labeled that way and all of a sudden we now got a law.

I am here because I've been on the Oneida Child Protection Board going on seven, eight years, something like that. And now I understand this Code, I'm not opposed to that, but one of the things I am opposed to is implementation of this Code as the way it is. Over the years we have drafted, originally drafted a Code from the Child Protection Board that was presented three or four years ago. And the drafters of that Code, along with us, was Andy Pyatskowit and Rob Orcutt, who were both tribal. Andy was a practitioner in tribal court for several tribes as a prosecutor, besides working for Oneida. Rob was instrumental, he was a practitioner for tribal court in Menominee and I believe at Stockbridge. But they were practitioners. What I see in here is we brought forth several things, and we believe that if this is implemented right now without this other procedural stuff in there, such as example the foster home licensing. We proposed that well before this, that should have been started and processed. There is no foster home licensing. We start with this, and all of a sudden were going to do that during the implementation. That is not something that can be developed over night. There was other parts in it. We as the Board, have only finally got to talk with the LOC people the last two weeks over this we have as a Board. I've been a practitioner for thirty five years in tribal court. I've helped develop codes, I've helped work with a tribal judge, I was a tribal advocate, I was a tribal presenter, I was a tribal petitioner for the Ho-Chunk Nation, and knew the process in tribal court and what to do. All I read in this one is references to the state codes, state law. And when you apply these stuff in tribal court you have to refer to the Indian Child Welfare. So there is a deferring to when we have dealing with the state courts, you defer to the Indian Child Welfare. It doesn't pertain to the tribe's court. We have our own set of rules and that's what we are supposed to be developing. But I truly believe that if this was implemented and gone forward without them foster home ordinance and anything else that needs to be done, is that we brought in people to help us when we do it. Lola Porter, who is probably well known in Indian Country, as one of the authors and knew about tribal codes. She was with us, we had her there, she did, she has done the, how to do the 161s. We could have had that 161 agreement, I know you guys are starting to think about ohh we have to have this 161 agreement. That should have been done two years ago. Ron Hermes, who is the director of that department was willing to come up and negotiate two years ago. Yet, people who were aware of it, but nothing was done. You know, I'm just kinda frustrated that

things that should have been done before this one, the foster home licensing and the 161s. And everyone thinks were going to get a lot of money out of this 161 agreement, but they are all for treatment programs, they are not for personnel. And I used to work on 161 agreements. So what I am trying to point out is that, we haven't.

When we met with the LOC we made recommendations as an example was like a pre-trial meeting, and people if they can come together, the parents and whoever else, ICW, can do a consent decree, and work on a consent decree. A consent decree is the form of a contract, or whatever, that certain things will be done by the parents, certain things will be provided to them, whatever, and if they agree to do it the incident or whatever goes away as if it never happened.

And the other provisions, like when you, like in the state process and doing it, and this is, NICWA will attest to it. That if you had a ladder, that ladder if you look at it, is the first thing state court's like to do is removal. And that's to take the removal out of it, and take people, and put kids out of the thing. But their theory is, and what we want is that should be the last resort. The ladder should be upside down. There should be intervention, prevention, and the removal is the last resort. There has to be emergency removal, but you know, is that, this is a Oneida Children's Code for its children. And it should be treated with that respect for the kids and the families. Too many kids have been lost because of that removal and conditions put upon them. So I know my five minutes are up, and I appreciate.

But I, and the other one is I have not seen a fiscal analysis. So whether or not, what is the cost of implementing. And I'm not threatening this board or anyone else, but unless, if this thing is trying to, I will personally do my best to do what I can because I don't think its ready to go and be implemented. I know there is time frames about implementation but I think that these things need to be corrected if it is. And I want it, I am not against the Children's Code. I want it. I've been waiting for it twenty, thirty years, but the way it is right now I think it could be a detriment to the Tribe down the road unless these other steps are taken first. Thank you.

Fawn Billie: Thank you Wes. Julie Denny?

Julie Denny: Thank you. I come before you today as a grandmother, whose, I'll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system. And I agree with, wholeheartedly with what Wes has said that, I've read the draft that you guys have and I didn't understand a whole lot of what I've read but I know we're in this system but how do we get our kids back much sooner and it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan, so I think what Wes has said is really true. We need to look at more of the intervention and the removal as a last resort. And just as FYI, all of the things that have supposedly stated about my grandkids and their parents, nothing was founded, you know, but yet they're in this system. And if we're going to put this in place, that's where our strength needs to be, upfront with these parents not months down the road where okay now were going to lay out a safety plan for your kids to come back and were going to say you have to do this and that. And the communication that's happening between the county right now and the Tribe I think is just a big, I don't want to use the word, a big joke. A lot of miscommunication. You know, the county all through, I tried to be involved as much as I could with my kid's court hearings and stuff, and everything I hear is

well it's the county's jurisdiction. Okay then what are we, puppets on this side that we just follow what the county says because that's kinda how we felt. We felt, personally I felt, we couldn't trust anybody. I didn't trust anybody on the Oneida tribal side that was helping our kids to a degree that made them feel you know, this is gonna go okay, you know. And I strongly oppose what's in there, what's being proposed right now, is the removal of the Indian Child Welfare Board. They were the only people that we could go to that would really listen to us and find out what's not happening and what should be happening, you know that could guide us, you know. We just didn't feel the trust in the beginning like we felt we should have. We have young parents that are in the system, you know it's not somebody of my age that getting my kids taken away. It's young adult parents, and they don't know anything about what they've gotten themselves into or how to get out you know, other than you told them to do all this and all that and you do it and ohh you don't get your kids back. And I keep reminding my kids, even though I don't feel removal was justifiable, but that's not for me to determine, but remember that day August 22 when those five kids were removed and we stood at our driveways crying and saying goodbye to them and didn't know where they were going. So our process that we have in place really needs to be, really needs to be identified – roles, responsibilities, communications, all that has to happen. I mean these families' spirits are broken, and how do we bring them back as a family and make them feel you weren't the worst parents, that shouldn't have never truly happened. I'm sure there are cases where emergency removal is justifiable but you know, we really need to be strong and if we're going to move forward with this and we got our ducks in order on this side. You know I don't fully agree with implementing so much of the state's rules that they have. You know, this is our, I agree with your goals, keep our kids here. You know, jurisdiction, what does that all mean. Is the county, how much is the county involved and will they release their, their jurisdiction back to the Tribe? I mean that's, I'm not comfortable with that and I'm not comfortable with the removal of the Indian Child Welfare Board. I think their oversight is really key, you know they can facilitate something that might be wrong and bring that to the tribal side and say this needs to be fine-tuned. I think their role is imperative. I just don't feel comfortable with them being removed from this process at all. And that's where I stand today. And I thank you for your time.

Fawn Billie: Thank you Julie. Bonnie Pigman.

Bonnie Pigman: Good afternoon. I have two items, excuse me, I am speaking on behalf of the Trust Enrollment Department. And on lines 336 or 337 I would like for that to be changed to read as, "enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department" not Committee, Department.

Second item is, the law references children obtaining information about their family upon reaching age eighteen when those children have been adopted out. The law should direct the individuals to access the Court or the ICW files. So I think those pieces are missing.

That's it, thank you.

Fawn Billie: Thank you. Alright. With there being no more speakers registered, the public meeting for the Child Welfare law is now closed, so you have the time, at 12:30 p.m.

We also do have written comments available that can be submitted until close of business day on Thursday May 11, 2017, and that could be delivered here at the LRO office or to one of us as LOC members, emailed or hand delivered. Thank you for your time.

-End of Meeting-

Oneida Child Welfare Law
Written Comments

May 10, 2017

First of all, I want to express that my comments regarding this Law are from my perspective as an Oneida member that has gone through the Brown County Ongoing Child Protection Services (CPS) and the Oneida Nations Indian Child Welfare (ICW).

Secondly, I highly agree that we are in need of a Law where the Oneida Judicial system will have the legal jurisdiction over the child who is alleged to be in need of protection or services, and jurisdiction over other matters relating to the child. Although I do not feel the Law is ready to be adopted. It is being rushed without looking at all avenues in the best welfare and protection of the Oneida children (see reasons noted below).

Within the past two (2) years of having temporary placement of my grandchildren to now being their legal guardian I need to share the following concerns of what I experienced, especially since ALL duties and responsibilities will then be on the ICW workers taking over all Brown County and Outagamie County cases:

1. As indicated the plan is to hire 4 to 5 more staff in this area. This is seriously an underestimated amount of staff needed to take care of ALL cases. The current ICW staff are not involved in all the activities that the Brown County CPS staff are:
 - a. Monthly house visits – ICW came to first initial visit when I had to pick up my grandsons from their mothers house. ICW then came to my house the 2nd time over a year later. CPS came every month.
 - b. Monthly Parent house visits – ICW went to maybe 2 of my grandson's mother house visits. CPS supervised or sent an Intern to attend/supervise the visits.
 - c. Parent (Father) Involvement – ICW met my son once during a family meeting. CPS extended/reached out a few times and asked that I share what he needs to do.
 - d. Weekly Parent (Mother) visits – ICW wasn't in attendance when I dropped my grandchildren off. CPS had to be at each supervised visit.
 - e. Health – ICW never asked if the boys are caught up on their shots, dental or doctor appoints. CPS contacted me almost monthly if they had their annual physicals, caught up with shots, going to dental, etc.
2. Supervised visits (house) – it has to be strict where ONLY the parent is allowed at these visits. Other members of the family or friends should not be allowed to be involved in these. Defeats the purpose of the parent to parent.
3. Parental Harassment – many times I've experienced outbursts from my grandson's mother and nothing was ever done. She was allowed to constantly verbally and socially harass me and my family. There needs to be some strict rules on this when there is written proof of such.

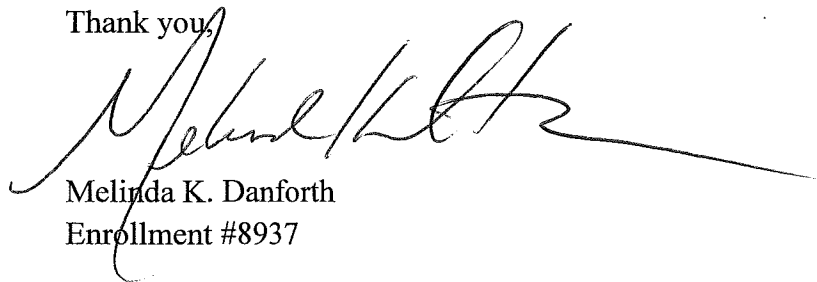
4. Parent Mental/Health – there needs to be immediate enforcement of allowing the person(s) know of any mental/health history of both parents. If there are taking in any child they should know if there are possible hereditary or life-threatening family history illnesses.
5. Training/Educating – Not once has either CPS or ICW mentioned to me how to help my grandsons through their emotional trauma. They felt abandoned repeatedly by both parents the past 2 years. It isn't easy as a grandmother to see them hurt and I don't know what to say to them other than show them and tell them how much love they have from me and my family. ICW must educate the person taking in any child because it is a life-changing event for some.

I recommend including a Memorandum of Agreement or Understanding with the Oneida Nation School System when it comes to truancy or family issues with children attending our school.

Lastly, I would like to express this Law be adopted ONLY when we can state the Oneida Nation can implement it BETTER than the other counties. Shame on any Oneida Business Committee (OBC) member that approves this and an Oneida member is hindered in the process because we were NOT prepared. All we need is more negative publicity, especially if it involves our children.

I appreciate the opportunity to provide my written comments. You may contact me through my personal email account if necessary.

Thank you,

A handwritten signature in black ink, appearing to read 'Melinda K. Danforth', with a long horizontal flourish extending to the right.

Melinda K. Danforth
Enrollment #8937

MEMORANDUM

To: Lisa Summers, Tribal Secretary

From: Susan White, Trust Enrollment Director *S. White*

Date: May 4, 2017

Subject: Child Welfare Law – Public Meeting Written Testimony

The Trust Enrollment Department is requesting consideration in allowing the following change to be made to Draft 16 of the Per Capita Law.

1. Lines 336/337: change to read as follows:
 - (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department, Oneida.....
2. When children go back to find family they should have access to court or ICW records to assist them.

The law references children obtaining information about their family upon reaching Age 18 when those children have been adopted. The law should direct those individuals to access the court or ICW file.

To; Legislative Reference Office

From; Jeanette Ninham

May 9, 2017

Re; Public Comment-Child Welfare Law

There are many concerns with adopting and implementing this law.

I have been a board member for 20 years and have seen many families come to this board for help or maybe just someone to listen. The OCPB consider this responsibility as the highest form of consciousness in building a nation of people, families and children. In May of 1997 the budget guidelines that were implemented listed the OCPB as one of the priorities of the nation.

There have been other children codes wrote, one in 1983 and one submitted by Council Delgado, so the child Protection board requested to write and submit a new draft in 2008. It was determined that in Council Delgado code a lot of the information was taken from the state code chapter 48 children's code as is this code also. This has been found to be very difficult for our families to get there children back and fulfill all the conditions required of them in the timeline given. The timeline 18/22 should be moved out longer or include extensions. This law is not for the lay person, it is confusing for a person with a college degree. The original law that was submitted by the Child Protection board in 2012 was written by 6 Elders and two Oneida attorneys.

The Licensing part was removed; you are putting the cart before the horse. To date we only have 8 foster homes and three pending. You must first have the homes and the money before you start removing children from their parents. The tribe only licenses level 2 homes, what about all the other levels of care? The counties have a scale that is used to set the pay for each child placed in the foster care/shelter care/residential placement, will we also? How will the foster care program pay the families? We have had children in group facilities for thousands of dollars per week? Are we hoping that the state and county give us money, more than what we are getting now and apply for more grants to run our Indian child Welfare department? To this day there is still no Financial Analysis to even know how much this is going to cost. Right now that same child would be able to get a medical card, foster payment for her care and clothing allowance should she need clothes from the county departments are we able to handle all of this? The Child Protective Board was paying for one child out of our budget (with the approval of the treasure office) and the foster parent was receiving 1,114.00 per month (one child). Will the tribe be responsible for all the children in the home, we have many blended families and can the tribe carry the cost to place all the children in our foster homes? There should be an order of what is needed to make this fail proof for our children and families (plan). This law also talks about GALs, and the court only has a few and they are also used for the child support cases. I am a GAL and I know that I sure do a lot more work than the state GAL's. I go to the home and see who is all in the home and talk to the families for hours at a time. I check medical history of the children and school records. I have never seen a state GAL do this. I would like to ask that the cost for the GAL service be increased to the same as the state.

Why are we passing a law, when we have no foster home to take care of these children? Are we going to turn around and pay the county to keep our children in non-tribal homes? How are we making sure they are not lost in the system or adopted out to non-tribal families? We continue to see over and over again that non-tribal foster families want to keep our Indian babies. The foster care department needs to identify policy and practice barriers to foster parent recruitment and retention, including licensing requirements and inter-agency relationships.

Many of our children are coming from FASD Fetal Alcohol Syndrome Disorder, heroin and Opioid addition from their mothers. It is very important that under line 1637 all the information be shared of the parent history of mental state, psychiatric, psychological, and therapeutic and what will/can be hereditary so this can be shared with the grandparents/foster/adopt family.

Last and finally what about all the other decisions that will need to be made in the state courts? For years the Child Protective board made the decision on where a child should be placed with and we continued to request family even when the worker had already given up. There needs to be an Elder board or a board to oversee the recommendation of the workers to make sure all avenues are checked and we continue to consistently look for family and never give up. Many times this board has given family names and contacts to the workers for them to call. There needs to be checks and balances when it comes to our children and families. I am asking that an over sight team/board be put in place to hear all the decision of the attorney/Indian child welfare worker on placement of children in state courts. Some tribes have Elders placed in there ICW department.

Line 292 ICWD duties and responsibilities, at what point will preventive services are offered? It should be first right at the top. There have many times that a worker will not even talk with a family member, they are told go to the county. Why have they not open their doors and said come in let me see if I can help you? I knew the lady at the front desk and she said she can never find anybody there to talk to people that come in. It should not matter if the county has jurisdiction there door should have been open to make a phone call or give them some information. I have heard many times, I didn't know where to turn to or who to talk to from concern family members. Will these workers listen or even have the time to listen?

I am requesting (pleading) that this law NOT be implemented until an implementation plan is in place and approved by the ICW department and the Child Protective board. Also that the Name be changed back to the Children's Code (same as all the other tribes in WI) not as the non-tribal people would reference the Indian People.

I am also requesting should something happen to any of our children or families that this committee be accountable and held responsible to correct whatever needs to be fixed.

Comments Regarding the Proposed Child Welfare Law at Chapter 708

Provided by Attorney Michelle L. Gordon, Staff Attorney Oneida Law Office, Lead ICWA Attorney

All comments will be to the Public Meeting draft dated 04/05/2017

1. Line 122 defines ICWA. The cite for ICWA should be given.
2. Line 166 defines Reasonable Efforts. In ICWA cases county agencies are required to provide Active Efforts. While I'm aware we are not bound by ICWA, discussions amongst agencies have determined that is best practice to provide all families with Active Efforts, not just Native families. Therefore, it is my suggestion that we use and define active efforts as best practice and to set the bar amongst agencies.
3. Line 183 defines Stipulation, but is not a very "legal" definition. I suggest amending it to "An agreement concerning the rights and/or obligations of the parties."
4. Line 195 defines WICWA. The cite for WICWA should be given.
5. 708.4-3 at line 202 states that the Nation shall intervene in all ICWA cases. This should be clarified by stating except those that the Nation chooses to take jurisdiction over. Cases may start in State court and therefore make it an ICWA case, but in some cases we will move to transfer and take jurisdiction, but in others we may just intervene. Just a suggestion to clarify.
6. 708.8-1 at line 339 states "may appoint" a GAL. A GAL should be appointed in all cases. Suggest changing this to "shall".
7. 708.8-2(b)(1) at line 357 uses the terminology "interested party". However, this terminology is not defined. This can be a vague term unless defined. It is my suggestion that a definition be provided.
8. 708.10-3 discusses deviation from placement preferences for good cause. A list is given and that list appears to be exhaustive. In other words, the Court may only consider 1, 2, and 3. I believe that limits the court and there may be other reasons to deviate. I think the court should be allowed to state other reasons to deviate within their discretion. This can always be appealed, but there may be circumstances other than what fits in the 3 options given that would allow for good cause to deviate.
9. 708.14-6 is Holding a Child in Custody. Subsection (f) states the child can be placed in the home of a person not a relative for no more than 30 days. However, subsection (b) lists foster home, which would likely be a non-relative. Does the 30 days referred to in (f) apply to (b). This should be clarified.

10. 708.15-4 states that a copy of the petition should be provided to the child if 12 or older. In State courts this is because they are provided with their own counsel to represent them, not a GAL. But I do not see in our law that we are providing counsel to this age group. This should be clarified and also goes back to my comment 6. GAL's should be appointed in all cases, specifically if we are not providing counsel. Then, in this case, the GAL would receive a copy of the petition and explain it to their ward.
11. 708.15-9 at line 615 states that an order may be re-heard if good cause is found. But re-heard based on what; someone's motion? How does it come before the court to be re-heard. This should be clarified.
12. 708.16-4 at line 647 states that a petition may be amended at any time, but does not speak to service upon all parties. A sentence should be added regarding the required service upon all the parties.
13. 708.17-4. Discusses admission or plea of no contest. Subsection (a) at line 657 states "the plea or admission". It should clarify, and state "the plea of no contest or admission".
14. Line 779 as part of the dispositional order has the court ordering an amount for child support. However, elsewhere in the law this is forwarded to child support and the court handling child support to deal with that issue. It is usually handled as a separate matter and I suggest it should remain separate. I suggest deleting 708.20-5(d).
15. Line 906 which is 708.22-1 states a request for change in placement may be made, but doesn't say how; such as by motion. I suggest such language be placed in this section. Look also at 708.22-4 regarding this same concern (line 918)
16. 708.23-3 at Line 972 states that a hearing on revision for dispositional orders is if new information is available. But this should also include a hearing shall be held if a party objections to the revised dispositional orders. The parties should be given due process to be heard and object to any potential revisions.
17. 708.26 regarding Guardianship; I may have missed it, but I don't see anything regarding the appointment of a GAL on these, or that the appointment of the GAL from the CHIPS shall carryover to the guardianship proceeding. A GAL should be appointed to provide recommendations to the court on the child's best interests. It is my suggestion that the same GAL carryover to the guardianship action.
18. Another comment on the guardianship section, is that the proposed guardian should be present at all hearings, and that the child's presence may be waived by the court.

19. Line 1213, 708.30-6 (c) allows the court to find a party in contempt if they don't comply with the agreement. First it should cite the law where the contempt provisions are found; stating "pursuant to _____. " Second, after the last word in the sentence, "contempt", the following or something similar should be added; "and any subsequent relevant orders to amend the agreement as necessary if there is a continuing refusal to abide by the agreement." The court could also send them back to peacemaking.
20. Adoptions at 708.38. I did not see a provision in there for the handling of step-parent adoptions. If we are going to be handling voluntary TPR's and mention step-parent adoptions, there should be provisions for step-parent adoptions. This should be added to the law.
21. 708.41-3. Same comments as comment 19.

Comment regarding child welfare Law

My name is Nasbah Hill and I am currently an Indian Child Welfare Social Worker. I have interned with the ICW department and worked with ICW since 2012. My family roots also stem from the Oneida community. I was also licensed to become a foster parent to take in two Oneida relative children who were in the foster care system. My perspective of the Oneida Child Welfare law is one that is reflected from the array of my different experiences-both professional and personal.

People may have experienced ICW in different ways. Some experiences may have been positive and some may have been negative. I work with the ICW team that is comprised of six exceptional workers who all have a master level education, with the exception of one worker who has a bachelor level degree with 18 years plus experience as a social worker, specifically to ICW matters. I can say with conviction that we all wear our hearts on our sleeve when it comes to the work that we do for the Oneida children and families. It is absolutely heartbreaking to see the break-up of Indian families. I have strongly advocated many times for Oneida children and families who were involved in the child welfare system, to be reunified, or to be able to stay connected to their families if possible. I can attest that there are county workers who diligently follow the Indian Child Welfare Act, and are sensitive to ICW cases. They are excellent in keeping in touch with our department and include us in each step of the way with cases pertaining to Oneida children. And sometimes we experience the complete opposite, in which our input and recommendations may not be taken into consideration at all. A lot of families have sought out our department and asked why their cases can't be heard in the Oneida court or ask if they can transfer current cases into the Oneida court. To which I respond that we have a family court, however dependency matters are not heard as we do not have a children's code adopted yet. A lot of people do not understand that family matters differ from child protection matters and the court proceedings are different as well. I have seen the distrust and frustrations that Oneida families have when dealing with CPS. Child Welfare systems are complex and can prove to be exhausting once you become intertwined with child protection services. Currently, child protection matters are heard in the court of the county in which the child resides in. Families will deal with both CPS workers and ICW workers. This can be overwhelming for families during court hearings or home visits. It is a very invasive process and one that feels like you may not have any control over. There are many times that people will call the ICW department and ask for their case to be transferred to tribal court. I feel that the Oneida Child Welfare law is essential and necessary. By putting this law into place would allow for the tribe to take jurisdiction over Oneida children and have child protection cases heard into our own tribal court. Our department has the educational background and expertise to handle these matters. The draft of the child welfare law is very thorough, and it shows that research was done prior to the law being written. Contributions were made by different professionals in the child welfare system. I feel that my team is very cognizant of what needs to happen in order for our department to take on this Child Welfare law. There is formality and a process that needs to happen to prepare our department for handling child protection matters. Our department is aware that while the law may be adopted sooner, it could take several years before this law is put into practice. This legislation would protect Oneida children by allowing the tribe to take full jurisdiction over child protection cases and hear them into tribal court.

Indian Child Welfare Written Comments-May 10, 2017

1. Need for Foster Home Ordinance in Place before Implementing Children Code-this was given to previous person(s) working on this Children Code over two (2) years ago by Oneida Child Protection Board.
2. 161 Agreement with Brown and Outagamie Counties need to be in place before Implementation of the Children Code and again, this was given by Oneida Child Protection Board to person(s) working on the Code over two (2) years ago and State of Wisconsin personnel were willing to come and help with negotiation with Brown/Outagamie County on the 161 Agreement.
3. Customary Adoptions in the Oneida Children Code.
4. Consent Decree Agreements.
5. Right for Parents to objection to transfer of case to Oneida Judiciary.
6. Oneida Child Protection Board remain in place for 2 year after implementation of the Children Code. This will give some coincidence what the OCPB was involved with for out of home placements of Oneida Children.

Submitted By

Wesley MartinWESLEY MARTIN, OR
409 Henry RdOneida, WI 54155
920-869-9014

Rec'd By

LRO

5/11/17

Jen Faluk



Legislative Operating Committee
May 17, 2017

Legal Resource Center

Submission Date: 3/1/17	Public Meeting: None yet
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a Expires: n/a

Summary: *This item is a directive from General Tribal Council and was added to the Active Files List as an emergency on 4/1/17.*

11/14/16 GTC: Motion by Gina Powless to direct the OBC to establish a legal office consisting of advocates and an advising attorney for GTC, and be elected at the 2017 General Election, to represent employees employed by Oneida Nation, and Tribal enrolled members that have any type of litigation at the Oneida Judiciary, and to retain legal counsel specifically for GTC to advise during duly called GTC meetings, this office will not report to the OBC, but to GTC on an Annual and Semi-Annual schedule. Seconded by Robert Steffes. Motion carried by hand count: 827 support; 2017 opposed; 80 abstentions.

Amendment to the main motion by Lloyd Zeise that rule changes and scheduling issues for gaming employees be reviewed. Motion ruled out of order by Vice-Chairwoman Melinda J. Danforth.

Amendment to the main motion by Linn Cornelius to revise the timeframe to the 2017 General Election. Seconded by Don Miller. Motion carried by show of hands

Amendment to the main motion by Linda Dallas to have training on a bi-annual basis that includes but is not limited to training in Judiciary laws, processes, procedures, and tribal laws that apply to it (representation of matters in front of the judiciary), to be opened to all Tribal Members; and to begin FY2018. Seconded by Brad Graham. Motion carried by show of hands

1/11/17 OBC: Motion by Lisa Summers to assign Vice-Chairwoman Melinda J. Danforth and Councilman Brandon Stevens to work on the General Tribal Council directive regarding the establishment of a legal office with advocates and advising attorney for Oneida Nation employees and enrolled Tribal Members, seconded by Tehassi Hill. Motion carried unanimously

2/8/17 OBC: Motion by Lisa Summers to accept the job descriptions as information, noting that the Business Committee will review and provide any recommendations back by February 14, 2017, seconded by Jennifer Webster. Motion carried unanimously

3/1/17 LOC: Motion by Tehassi Hill to add the Legal Resource Center Governing Documents to the Active Files List as high priority, and assign Brandon Stevens as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

4/5/17 LOC: Motion by Jennifer Webster to add the Legal Resource Center Emergency law to the active files list as a high priority with Brandon Stevens as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

Motion by Jennifer Webster to remove the GTC Legal Resource Center Governing Documents item from the active files list; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Accept the emergency adoption packet for the Legal Resource Center law and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: May 16, 2017
RE: Legal Resource Center Emergency Law

Please find the following attached backup documentation for your consideration of the Legal Resource Center Emergency Law:

1. Resolution: Legal Resource Center Emergency Law
2. Statement of Effect: Legal Resource Center Emergency Law
3. Legal Resource Center Legislative Analysis
4. Legal Resource Center Emergency Law (Clean)

Overview

The attached Resolution will adopt an emergency law that creates the Legal Resource Center. The Legal Resource Center was approved by General Tribal Council motion on November 14, 2016. The emergency law is required as the advocates that will provide legal advice and representation to Tribal members and employees in cases brought forth in the Judiciary are on the ballot for the June 8, 2017 general election and legislation is necessary to provide structure to the Legal Resource Center to benefit the general welfare of the Oneida Nation by informing the advocates of the general provisions and duties associated with the Legal Resource Center.

Emergency laws do not require a public meeting or fiscal impact statement. If adopted, the law will become effective immediately and will remain in effect for six (6) months, unless extended or permanently adopted [See section 109.9-5 of the Legislative Procedures Act].

Requested Action

Approve the Resolution: Legal Resource Center Emergency Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Legal Resource Center Emergency Law

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** on November 14, 2016, the Oneida General Tribal Council approved a motion directing the Oneida Business Committee to establish a legal office consisting of advocates and an advising attorney to represent Tribal members and employees in any type of litigation at the Oneida Judiciary and to advise the Oneida General Tribal Council during duly called General Tribal Council meetings; and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** adopting an emergency law to create the Legal Resource Center is necessary in order to preserve the public health, safety, or general welfare of the reservation population as two (2) advocates are on the ballot for the July 8, 2017 general election and legislation is necessary to provide structure to the Legal Resource Center; and
- WHEREAS,** observance of the adoption requirements under the Legislative Procedures Act for passage of laws and policies would be contrary to public interest.

NOW THEREFORE BE IT RESOLVED, that the Legal Resource Center law is hereby adopted on an emergency basis for six (6) months and shall take effect immediately.

BE IT FURTHER RESOLVED, that the Oneida Business Committee is hereby directed to implement a Transition Plan to include the following:

- (1) *Elections.* The elections for the Legal Resource Center shall be held during the 2017 general election. The election process shall follow the Nation's Election law and during the first Legal Resource Center election, the Advocates shall be elected as follows:
 - a. The candidate for Advocate with the highest number of votes shall be elected to a term of four (4) years.
 - b. The candidate for Advocate with the next highest number of votes shall be elected to a term of three (3) years.
 - c. In the event of any tie vote, the provisions of the Nation's Election law for resolving a tie vote shall determine the outcome.
- (2) *Legal Resource Center Opening.* The Legal Resource Center shall be open to Tribal members and employees beginning on February 1, 2018.

BE IT FURTHER RESOLVED, that the Oneida Business Committee is authorized to make such modifications and additions to the above Transition Plan as it deems necessary to implement the Legal Resource Center in accordance with the proposed timelines, and shall subsequently file a report at the annual or semi-annual meeting of the Oneida General Tribal Council that occurs after the modifications or additions are made.



Statement of Effect
Legal Resource Center Emergency Law

Summary

This Resolution adopts an emergency law that creates the Legal Resource Center.

Submitted by: Robert J. Collins II, Staff Attorney, Oneida Law Office.

Analysis by the Legislative Reference Office

This Resolution adopts an emergency law that creates the Legal Resource Center. The Legal Resource Center was approved by General Tribal Council (GTC) motion on November 14, 2016 and establishes a department that will provide legal advice and representation to Tribal members and employees in cases brought forth in the Judiciary and to represent GTC at GTC meetings.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee (OBC) to take emergency action to amend a law where it is "necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population" and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [See section 109.9-5 of the LPA]. Through this Resolution, the OBC will provide structure to the Legal Resource Center which will guide the two (2) advocates that are on the ballot for the June 8, 2017 general election by informing the advocates of the general provisions and duties associated with the Legal Resource Center.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.



Legal Resource Center Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: GTC Directive	SPONSOR: Brandon Stevens	DRAFTER: Robert J. Collins	ANALYST: Maureen Perkins
Intent of Law	To govern the Legal Resource Center (LRC) including the establishment, restrictions, prohibitions, filling vacancies, establishing qualifications, election and duties of attorneys and advocates, and detail the discipline and removal process.		
Purpose	The purpose of this law is to establish a Legal Resource Center to provide legal advice and representation to both Tribal members and employees in cases before the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings <i>[see 811.1-1]</i> .		
Affected Entities	Judiciary, Employees of the Nation, Tribal members, Supervising Attorney, Advocates, Oneida General Tribal Council (GTC), Oneida Business Committee (OBC)		
Affected Legislation	Removal Law, Professional Conduct for Attorneys and Advocates (in development), Judiciary Rules of Admission		
Enforcement/Due Process	Supervising Attorneys and Advocates are subject to disciplinary actions pursuant to the Professional Conduct for Attorneys and Advocates law and any other laws that govern discipline and/or removal of elected positions <i>[see 811.7-1]</i> . Supervising Attorneys and Advocates are subject to the Removal Law if they have their admission to practice before the Judiciary revoked or no longer qualifies for the position <i>[see 811.7-2]</i> .		
Public Meeting	This draft is presented for adoption on an emergency basis; meaning no public meeting is required until the law is submitted for permanent adoption.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The proposed legislation was developed in response to a directive from the GTC. The draft is presented as emergency legislation because there is not enough time to follow the regular legislative process to have the legislation in place by the July 8, 2017 General Election.
- B. An alternative to this legislation was considered. Early on, there was discussion about setting the office up as a Tribal corporate entity similar to a legal aid entity; however, based on the motion and the timelines it was decided that the office would be created via legislation similar to that of the Judiciary.
- C. The benefits to this legislation include the development of the framework as a governing document to implement the Legal Resource Center to fulfill the GTC directive to elect Advocates and a Supervising Attorney to represent Tribal members and employees before the Judiciary and to represent the GTC at GTC meetings.

SECTION 3. CONSULTATION

- A. The Oneida Business Committee and the Oneida Judiciary were consulted about the contents of the legislation.

- B. The laws and rules pertaining to the Judiciary were consulted in the drafting of this legislation.

SECTION 4. PROCESS

- A. This law has been introduced as emergency legislation in order to have a governing document in place when the Legal Resource Center Advocates are elected at the general election on July 8, 2017. This is the correct legislative process in light of the fact that there isn't time to have this law in place by the election through the regular legislative process.
- B. This law was directed by the GTC on 11/14/2016 and added to the Active Files List as an emergency on 4/5/17.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. This legislation establishes general provisions related to the Legal Resource Center *[see 811.4]*.
- Established the Legal Resource Center which will provide legal advice and representation to Tribal members and employees in cases brought before the Judiciary and to represent the GTC at GTC meetings *[see 811.4-1]*.
 - Restrictions are provided which limit the actions of the Legal Resource Center *[see 811.4-2]*.
 - The Supervising Attorney or Advocates elected by the GTC may not be elected or appointed to serve on any of the Nation's boards, committees or commissions or be otherwise employed, elected or appointed by the Nation *[see 811.4-3]*.
 - Vacancies of the Supervising Attorney or Advocate positions may be appointed by the OBC until the next general election at which time the successor will be elected to a four (4) year term *[see 811.4-4]*.
 - If there is no Supervising Attorney in office (there are no candidates on the July general election ballot for the Supervising Attorney position), then the Advocates shall assume duties related to:
 - *[see 811.4-5]*.
- B. The Supervising Attorney is detailed in section 811.5 including:
- Qualifications *[see 811.5-1]*:
 - There shall be at least one full-time elected Supervising Attorney with qualifications detailed in this section.
 - The elected term is four (4) years *[see 811.5-2]*.
 - Duties are detailed in section 811.5-3 and include:
 - providing legal services
 - maintaining ethical standards
 - setting up the Legal Resource Center including drafting any rules or standard operating procedures (SOP's)
 - supervising Advocates and staff
 - representing the Legal Resource Center at functions and meetings
 - managing the Legal Resource Center including budging and reporting
 - advising the GTC at GTC meetings
 - providing training to Tribal members regarding the Oneida Code of Laws and the Judiciary's processes and procedures
 - any other duties prescribed by the Nation's laws and the Legal Resources Center's SOP's.

C. The Advocates are detailed in section 811.6 including:

- Qualifications *[see 811.6-1]*:
 - There shall be at least two (2) full time Advocates elected by the Nation's membership with qualifications detailed in this section.
 - Admission to practice before the Judiciary includes standards that appear in section 811.6-1 and passing a background check, receiving a pardon or forgiveness from the Nation if the background check includes a conviction of any offense involving fraud or misrepresentation or any felony *[see Judiciary Rules of Admission Rule 1-2(A)]*.
- The elected term is four (4) years *[see 811.6-2]*.
- Duties are detailed in section 811.6-3 and include:
 - providing legal services
 - representing the LRC at functions as appropriate
 - maintaining ethical standards
 - attending continuous training
 - maintaining informed regarding applicable laws
 - other duties as assigned by the Supervising Attorney or the laws and rules of the Nation and the LRC's SOPs.
 - The Advocates are responsible for a portion of the Supervising Attorney's duties if this position is vacant *[see 811.4-5]*.

D. Discipline and Removal *[see 811.7]*.

- Supervising Attorneys and Advocates are subject to disciplinary actions according to the Professional Conduct for Attorneys and Advocates law (under development) and the Removal Law.

E. Administrative Rulemaking Authority

- The Supervising Attorney shall promulgate rules establishing how clients apply for the Legal Resource Center's services *[see 811.5-3(l)]*. The Advocates shall assume this duty if no Supervising Attorney is in office *[see 811.4-5]*.

F. The proposed legislation is written clearly and simply.

SECTION 6. INTENT

A. The purpose of this law is to provide the foundation for the LRC in order to guide the development of the office.

B. This legislation clearly applies to the elected positions of the LRC including the Supervising Attorney and the Advocates.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. This law does not impact or conflict with any existing laws of the Nation. The Supervising Attorney and Advocates shall act in accordance with all existing laws and rules of the Nation that establish guidelines for attorneys and advocates including:

- The Rules of Civil Procedure *[see Chapter 803]*
 - Establishes the role and responsibilities of attorneys and advocates in the civil proceedings

- The Rules of Appellate Procedure *[see chapter 805]*
 - Establishes the role and responsibilities of attorneys and advocates in the appellate proceedings
 - Oneida Judiciary Rules of Evidence *[see Chapter 804]*
 - Establishes the attorney-client and advocate-client relationship
 - Divorce, Annulment, Legal Separation *[see Chapter 702]*
 - Establishes the role and responsibilities of an attorney or advocate representing a party in divorce, annulment, or legal separation proceedings.
 - Professional Conduct for Attorneys and Advocates law (under development)
 - Governs the conduct of attorneys and advocates admitted to practice law before the Judiciary.
 - Judiciary Rules of Admission *[See Judiciary Website]*
 - Establishes minimum requirements for admission to practice before the Judiciary and to regulate those admitted to practice.
- B.** Although it is not a conflict; this law establishes Advocates as elected by the membership, whereas the laws above do not consider advocates to be elected positions; rather non-attorneys admitted by the Judiciary to practice law as a representative or advisor to a party *[see Rules of Civil Procedure, 803.3(a)]*.

SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A.** This legislation does not impact existing rights, privileges, benefits or obligations.
- B.** Due process is addressed through the Professional Conduct for Attorneys and Advocates law (in development) regarding disciplinary action and the Removal Law regarding Supervising Attorneys or Advocates who have their admission to practice before the Judiciary revoked or no longer qualifies to serve as a Supervising Attorney or Advocate *[see 811.7]*.
- C.** The Judiciary Rules of Admission details the revocation process should an attorney or advocate violate any of the rules of admission and no long qualify to practice before the Judiciary *[see Judiciary Rules of Admission on the Judiciary website]*.
- D.** The Supervising Attorney and the Advocates are elected to four year terms. The first election for the Advocates will be for staggered terms with the Advocate with the highest votes getting a term of four (4) and the next highest votes with a term of three (3) years *[see adopting Resolution]*.
- E.** This legislation will not affect any existing legislation or any processes currently in place.

SECTION 9. ENFORCEMENT

- A.** The Professional Conduct for Attorneys and Advocates law (currently in development) will establish:
- the requirement of competent representation of clients
 - the scope of representation, promptness of representation
 - the required nature communication with clients
 - any legal fees
 - the confidential nature of representation
 - address any conflicts of interest

- duties to former clients
 - restrictions for former judges, mediators, or peacemakers
 - representing clients with diminished capacity
 - declining or terminating representation
 - duties to perspective clients
 - the role as advisor
 - candor and impartiality toward the Judiciary
 - fairness to opposing party and counsel
 - counsel as witness
 - admittance to practice and disciplinary matters
 - misconduct
 - civil actions for negligence or violation of duty
 - disciplinary actions
- B. The GTC will enforce this law in accordance with the Removal Law which governs the removal of elected officials *[see Removal Law, 104.4-1]*.

SECTION 10. ACCOUNTABILITY

- A. The Supervising Attorney and the Advocates are elected positions who are accountable directly to the GTC.
- B. The Legal Resource Center will report to GTC on an Annual and Semi-Annual schedule.
- C. These reports are available to Tribal members at GTC meetings, on the Members Only website, or through the Secretary's Office.

SECTION 11. OTHER CONSIDERATIONS

- A. Section 109.9-5 of the Legislative Procedures Act authorizes the OBC to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process *[see Legislative Procedures Act, 109.9-5(b)]*. In this situation, there would not be time to implement the law through the standard legislative process prior to the Nation's general election on July 8, 2017. If adopted on an emergency basis, this law will become effective immediately, and will remain in effect for up to six months, with the possibility of a one-time extension of up to an additional six months *[see Legislative Procedures Act, 109.9-5(b)]*.
- B. There are no candidates for the Supervising Attorney position. In this case the elected Advocates will be responsible for the implementation of this law and establishing the Legal Resource Center *[see 811.4-5]*.
- C. The adopting resolution for this legislation includes a transition plan which includes staggered terms for the Advocate positions as noted above, and an official opening date for the Legal Resource Center of February 1, 2018 to allow the elected Advocates time to create the rules and SOP's necessary to run the LRC *[see adopting resolution]*.

Title 8. Judiciary – Chapter 811 LEGAL RESOURCE CENTER

811.1. Purpose and Policy
811.2. Adoption, Amendment, Repeal
811.3. Definitions
811.4. General Provisions

811.5. Supervising Attorney
811.6. Advocates
811.7. Discipline and Removal

811.1. Purpose and Policy

811.1-1. *Purpose.* The purpose of this law is to establish a Legal Resource Center to provide legal advice and representation to both Tribal members and employees in cases before the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings.

811.1-2. *Policy.* It is the policy of the Nation to provide legal assistance to its members and employees in an effort to protect individual rights.

811.2. Adoption, Amendment, Repeal

811.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

811.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

811.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

811.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

811.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

811.3. Definitions

811.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Advocate” means a person elected by the membership who is a non-attorney admitted to practice law before the Judiciary and presented to the Court as the representative or advisor to a party.

(b) “Employee” means any individual hired by the Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, elected/appointed officials, political appointees, and contracted persons.

(c) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court, and Appellate Court.

(d) “Nation” means the Oneida Nation.

(e) “Rule” means a set of requirements enacted by an authorized agency in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret, and/or enforce this law.

(f) “Supervising Attorney” means a person elected by the membership who is trained and licensed to represent another person in Court, to prepare documents, and to give advice or counsel on matters of law.

(g) “Tribal member” means an individual who is an enrolled member of the Nation.

811.4. General Provisions

811.4-1. *Establishment.* There is hereby established a Legal Resource Center, which shall provide legal advice and representation to Tribal members and employees in cases brought forth in the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings.

811.4-2. *Restrictions.* The Legal Resource Center shall not:

(a) Accept a case that is determined to be frivolous or without legal merit. Whenever the Supervising Attorney or Advocate makes such a determination in a case where a notice of representation has been filed or an appearance has been made, he or she shall motion the court for withdrawal;

(b) Accept a case when there is a conflict of interest pursuant to the Professional Conduct for Attorneys and Advocates law;

(c) Appear in any case before the Judiciary prior to the client applying for the services of the Legal Resource Center; or

(d) Appear in any case before the Judiciary where the Supervising Attorney or Advocate does not meet the qualifications established by law.

811.4-3. *Prohibitions.* While serving a term of office, no Supervising Attorney or Advocate may:

(a) Be elected or appointed to serve on any of the Nation’s boards, committees or commissions; or

(b) Be otherwise employed, elected, or appointed by the Nation.

811.4-4. *Vacancies.* If a Supervising Attorney or Advocate dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive days, is declared incompetent by a court of competent jurisdiction, or there are no candidates for the position in the election, the position shall be declared vacant by the Oneida Business Committee and the Oneida Business Committee may appoint a successor to fill the position until the next general election at which time a successor will be elected to a four (4) year term.

811.4-5. *Assumption of Duties.* If there is no Supervising Attorney in office, then the Advocates shall share the duties promulgated by sections 811.5-3(b), (d), (e), (f), (g), (h), (l), (m), and (o).

811.5. Supervising Attorney

811.5-1. *Qualifications.* There shall be at least one (1) full-time Supervising Attorney of the Legal Resource Center. This position shall be an elected position and shall have the following qualifications:

(a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date of the election;

(b) have a juris doctor (J.D.) degree from an accredited law school;

(c) have at least two (2) years of previous experience practicing law and/or equivalent combination of education and experience;

(d) be licensed to practice law in the State of Wisconsin and in good standing; and

(e) be admitted to practice before the Judiciary.

85 811.5-2. *Election.* The Supervising Attorney shall be elected by the Nation's membership to a
86 term of four (4) years.

87 811.5-3. *Duties.* The Supervising Attorney shall have the duty of administering the Legal
88 Resource Center, which shall include the following:

- 89 (a) provide legal services;
- 90 (b) oversee the assignment of cases to the Advocates;
- 91 (c) supervise the Advocates;
- 92 (d) supervise any administrative personnel;
- 93 (e) establish standards concerning the training and continued education for the
- 94 Advocates;
- 95 (f) manage the operation, activities, policies, and procedures of the Legal Resource
- 96 Center;
- 97 (g) submit an annual budget for consideration by the Oneida General Tribal Council;
- 98 (h) provide annual and semi-annual reports to the Oneida General Tribal Council;
- 99 (i) represent the Legal Resource Center at functions and meetings where appropriate;
- 100 (j) maintain the integrity of the legal process by acting ethically and honestly both in
- 101 private and in public and maintaining the strictest of confidentiality;
- 102 (k) remain informed about changes to Tribal, state and federal laws, and state and federal
- 103 court and administrative hearing body decisions that may impact Indian country;
- 104 (l) develop standard operating procedures to ensure confidentiality and accommodate the
- 105 handling of potential conflicts of interest by the Legal Resource Center (e.g. should the
- 106 Legal Resource Center represent both parties to an action, written informed consent shall
- 107 be obtained by both parties prior to the commencement of representation). The
- 108 procedures shall not conflict with existing law, including the Professional Conduct for
- 109 Attorneys and Advocates law;
- 110 (m) promulgate rules establishing how clients apply for the Legal Resource Center's
- 111 services;
- 112 (n) advise the Oneida General Tribal Council during General Tribal Council meetings;
- 113 (o) provide bi-annual training starting in FY 2018 that is open to all Tribal members and
- 114 includes, but is not limited to, training on the Oneida Code of Laws and the Judiciary's
- 115 processes and procedures; and
- 116 (p) other duties as prescribed by the Nation's laws and the Legal Resource Center's
- 117 standard operating procedures.
- 118

119 **811.6. Advocates**

120 811.6-1. *Qualifications.* There shall be at least two (2) full-time Advocates in the Legal
121 Resource Center. The Advocates shall be elected by the Nation's membership and have the
122 following qualifications:

- 123 (a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date
- 124 of the election;
- 125 (b) have one (1) of the following from an accredited institution:
- 126 (1) a juris doctor degree;
- 127 (2) a doctor of philosophy degree;
- 128 (3) a master's degree; or
- 129 (4) a bachelor's degree or associate's degree in one of the following fields of
- 130 study, provided that a degree in a similar field of study shall also apply;

- (A) Criminal Justice
- (B) Education
- (C) Political Science (including Government, Politics or Public Policy)
- (D) Human Rights
- (E) Journalism
- (F) Legal Studies
- (G) Native American Studies
- (H) Psychology
- (I) Sociology
- (J) Public Administration
- (K) History
- (L) Business Administration
- (M) Economics or Finance
- (N) Philosophy
- (O) Judicial Studies
- (P) Paralegal Studies
- (Q) Family Law

(c) have at least two (2) years of experience in litigation, negotiation, or advocacy and/or equivalent combination of education and experience; and

(d) be admitted to practice before the Judiciary.

811.6-2. *Election.* Advocates shall be elected by the Nation's membership to a term of four (4) years.

811.6-3. *Duties.* Advocates shall represent clients in accordance with the Professional Conduct for Attorneys and Advocates law. In addition to all other duties imposed by this law and other laws or rules of the Nation, advocates shall:

- (a) provide legal services;
- (b) complete assignments given by the Supervising Attorney or pursuant to section 811.4-5;
- (c) represent the Legal Resource Center at functions and meetings where appropriate;
- (d) maintain the integrity of the legal process by acting ethically and honestly both in private and in public and maintaining the strictest of confidentiality;
- (e) attend training and continued education;
- (f) remain informed about changes to Tribal, state and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country; and
- (g) other duties as established by the Supervising Attorney or pursuant to section 811.4-5, the Nation's laws and rules, and the Legal Resource Center's standard operating procedures.

811.7. Discipline and Removal

811.7-1. Supervising Attorneys and Advocates shall be subject to disciplinary actions pursuant to the Professional Conduct for Attorneys and Advocates law and any other laws that govern discipline and/or removal of elected positions.

811.7-2. Supervising Attorneys and Advocates shall at all times be subject to removal. When a Supervising Attorney or Advocate has their admission to practice before the Judiciary revoked or no longer qualifies to serve as a Supervising Attorney or Advocate, removal proceedings shall be commenced in accordance with the Removal Law.

177

178 *End.*

179 Adopted – BC-_____



Legislative Operating Committee May 17, 2017

General Tribal Council Meetings Law

Submission Date: 9/17/14	Public Meeting: 1/7/16
LOC Sponsor: Fawn Billie	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.*

9/17/14 LOC: Motion by Fawn Billie to add the following five items to the Active Files List: GTC Meetings Law; Petition: Directing a “Stall Mall” be Created; Petition: Publishing Names and Addresses of Petition Signers in GTC Mailouts; Petition: Real Estate Taxes for all Tribe Owned Property to be Paid by Tribe; Petition: Responding to Questions and Comments from the Floor at GTC; seconded by Tehassi Hill. Motion carried unanimously.

Note: Fawn Billie will be the sponsor for this item

11/12/14 OBC: Motion by Melinda J. Danforth to defer the GTC Petitions Process SOP to a Business Committee work meeting for discussion, seconded by Fawn Billie. Motion carried unanimously.

4/3/15 LOC: Motion by Jennifer Webster to forward the GTC Meetings Law to the Oneida Business Committee to put on the next GTC agenda; seconded by Tehassi Hill. Motion carried unanimously.

4/22/15 OBC: Deleted from the agenda at the adoption of the agenda since this item was already included in the July 6, 2015 GTC backup.

7/6/15 GTC: Motion by Madelyn Genskow that the General Tribal Council Meetings Law be remanded back to the Legislative Operating Committee for changes, including Public Meetings for comments, and that the mailing be provided to all voting members; seconded by Sherrole Benton. Motion carried by show of hands.

8/5/15 LOC: Motion by David P. Jordan to defer the GTC Meetings Law to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

9/1/15: *Work meeting held.* Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Rhiannon Metoxen, Steve Webster, Cheryl Skolaski, Bradley Graham, Bill Graham, Krystal John, Candice Skenandore, Douglass McIntyre.

11/18/15 LOC: Motion by Fawn Billie to defer the GTC Meetings Law with the noted changes for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

Noted changes include the following:

- *Require the Tribal Secretary to provide a petition form with instructions;*
- *Require one subject matter per petition (does not limit the number of resolutions so long as they apply to the topic);*

- *Limit the number of resolutions that can be heard at a GTC meeting;*
- *Defer the discussion regarding denying a vote on matters deemed illegal or unconstitutional;*
- *Expand the 60-day timeframe under 11.5-5 (a);*
- *Add specific deadlines for each required analysis (legal, legislative & fiscal);*
- *If a petition is denied, notice must be provided to the petitioner and those that signed the petition stating the reason(s) why the petition was denied;*
- *Amend the list under 11.5-8 to be more common sense;*
- *Include when an alternate may be assigned for representing a petition;*
- *Identify the forums, media that can be used at GTC and specify who can utilize them for presentations;*
- *Remove the 2-minute time limit under 11.8-5 (c) and allow GTC, at the start of the GTC meeting, to determine if a time limit is necessary, and if so, identify the time limit;*
- *Require the OBC to adopt a GTC security plan; and*
- *Identify who is allowed to videotape*

12/9/15 OBC: Motion by Lisa Summers to request the Internal Security Department provide a Plan of Action related to Rules of Decorum and their enforcement and for the Plan of Action to be presented to the Business Committee on December 22, 2015, for input and feedback, seconded by Jennifer Webster. Motion carried unanimously.

1/4/16 and 2/20/16 GTC: Motion by Brad Graham to adopt the agenda with the deletion of item 4. Adopt the Rules of Decorum and Appoint Sergeant-at-Arms. Seconded by Mike Debraska. Motion carried by show of hands.

4/27/16 OBC: Motion by Jennifer Webster to approve the Tribal Secretary filing copyright and any other legal requests to remove General Tribal Council videos from YouTube channel, seconded by Tehassi Hill. Motion carried unanimously.

7/25/16: *Work Meeting held.* Meeting held for an update on the status of this item. Attendees include Jen Falck, Tani Thurner, Jo Anne House.

9/14/16 LOC: Motion by Lisa Summers to adopt resolution # 09-14-16-A Rules of Decorum for General Tribal Council Meetings, seconded by Jennifer Webster. Motion carried unanimously:

10/7/16: *Quarterly Sponsor Update Meeting held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Tani Thurner, Maureen Perkins, Clorissa Santiago. LRO Director will schedule a work meeting and invite the BC Secretary. The Trust Enrollment Dept (Bonnie Pigman) has concerns about combining the GTC stipend policy, the 10 day notice, and the GTC meetings law into one document- because it may become more challenging to make amendments.

11/1/16. *Work meeting held.* Present: Brandon Stevens, Susan White, Jenny Webster, Maureen Perkins, Bonnie Pigman, Jo Anne House, Lisa Summers. Waiting for new draft based on this meeting.

3/1/17: *Work meeting held.* Present: Tani Thurner, Brandon Stevens, Maureen Perkins, Jo Anne House, Cathy Bachhuber, Fawn Billie, Tehassi Hill, and Jessica Wallenfang (minutes)

4/3/17: *Work meeting held.* Present: Danelle Wilson, Tani Thurner, David P. Jordan, Jennifer Webster, Cathy Bachhuber, Jo Anne House

4/13/17: *Work meeting held.* Present: David P. Jordan, Cathy Bachhuber, Tani Thurner, Jennifer Webster, Fawn Billie, Tehassi Hill. Draft updated and sent out for one final review; with comments due to LRO director by April 24, 2017.

5/3/17 LOC: Motion by Jennifer Webster to approve the draft and forward the General Tribal Council Meetings law for a legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Jennifer Webster to have Brandon Stevens put the General Tribal Council Meetings law on the May 15, 2017 Oneida Business Committee work meeting agenda; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

Grant an extension to the June 7, 2017 LOC meeting for the legislative analysis to be completed, because additional changes have been requested for the draft.

Direct the LRO to prepare a public meeting packet for the LOC to consider approving at the June 7, 2017 LOC meeting.



Legislative Operating Committee
May 17, 2017

Conflict of Interest Permanent Amendments

Submission Date: 3/15/17	Public Meeting: None
LOC Sponsor: Brandon Stevens	Emergency Enacted: April 26, 2017 Expires: October 26, 2017

Summary: An emergency amendment to the Conflict of Interest law in regards to the HUD Site Monitoring Review Finding #2.

3/15/17 LOC: Motion by Jennifer Webster to add the Conflict of Interest Emergency Amendments to the Active Files List as a high priority and assign Brandon Stevens as the sponsor seconded by Fawn Billie. Motion carried unanimously.

4/5/17 LOC: Motion by Jennifer Webster to accept the Conflict of Interest Emergency Amendments draft and analysis and direct the Legislative Reference Office to prepare an adoption packet for an e-poll if HUD responds approving the draft prior to the April 12, 2017 Oneida Business Committee meeting; seconded by David P. Jordan. Motion carried unanimously.

4/19/17 LOC: Motion by Jennifer Webster to accept the Conflict of Interest permanent amendments draft with the noted changes and request a legislative analysis from the Legislative Reference Office, due back May 3, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Noted changes include: 1) line 142 to remove "it owns", 2) line 128 add "whether as a prime contractor" or "subcontractor" to the end of the sentence, and 3) line 168 change "shall" to "may".

5/3/17 LOC: Motion by Tehassi Hill to approve the public meeting packet and forward the Conflict of Interest permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Approve the updated public meeting packet for the approved public meeting to be held on June 5, 2017.

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Title 2. Employment – Chapter 217

CONFLICT OF INTEREST

217.1. Purpose and Policy	9	<u>Conflicts</u> of Interest
217.2. Adoption, Amendment, Repeal	10	217.6. <u>Penalties for Non-Disclosure of a Conflict of Interest</u>
217.3. Definitions	11	217.7. Prohibited Activities Resulting from a Disclosed Conflict
217.4. General	12	of Interest
217.5. <u>Penalties for Non-Disclosure of a Conflict</u> <u>Organizational</u>	13	217.78. Exemptions

217.1. Purpose and Policy

217.1-1 Purpose. The purpose of this law is for the Nation to ensure that all employees, consultantscontractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation's enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation.

217.1-2. Policy. It is the policy of the Nation to assert its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the Nation in the course of an employee's duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights. The Nation asserts that no persons who work for the Nation or are responsible for safeguarding its interests nor their relatives, associates, partners, or anyone connected with such persons should in any way benefit against or in competition with the Nation's interests without full and complete prior disclosure to the Nation.

217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B.

217.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

217.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

217.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

217.3. Definitions

217.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Agent” -means a person who is authorized to act for or in place of of another, which may include an employee, consultantcontractor, elected official, officer, political appointee, and appointed -or elected member of the Nation.

(b) “Conflict of interest” means any interest, real or apparent, whether it be personal,

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financial, political, or otherwise, in which an elected official, officer, political appointee, employee, ~~consultant~~~~contractor~~, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, ~~consultant~~~~contractor~~, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(c) ~~“Consultant”~~ “Contractor” means a person ~~who provides~~or business providing expertise, services, goods or guidance to the Nation.

(d) ~~“Elected official”~~ means a person elected to the Oneida Business Committee who does not hold an officer position.

(e) ~~“Employee”~~ means anyone employed by the Oneida Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis.

(f) ~~“Entity”~~ means a department, program or service of the Nation.

(g) ~~“Immediate family member”~~ means an individual’s husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

(h) ~~“Member”~~ means a person who serves on a board, committee, or commission of the Nation. It does not include the Oneida Business Committee or the governing body of a Tribally Chartered Corporation.

(i) ~~“Nation”~~ means the Oneida Nation.

(j) ~~“Officer”~~ means a person elected to the Oneida Business Committee holding the Chairperson, Vice Chairperson, Secretary, or Treasurer position.

(k) “Organizational conflict of interest” means that because of other activities or relationships with other parties, a potential contract or contractor is:

(1) unable to render impartial assistance or advice to the Nation;

(2) cannot perform a contract with the Nation in an objective way; or

(3) has an unfair competitive advantage compared to others.

(l) “Political appointee” means a person who assists an elected member of the Oneida Business Committee in their daily activities and operations.

~~(h-m)~~ “Third party agreement” means any agreement with the Pharmacy in which an insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to subscribers of a valid health plan of that insurance provider.

217.4. General.

217.4-1. Scope.

(a) ~~“This law shall apply to agents, elected officials, officers, political appointees, employees, consultantscontractors, appointed or elected members or any other persons with whom they may be associated in personal, marital, familial, business, financial or~~

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other relationships.

(b) Under the protection of this law are the resources of the Nation, its enterprises, programs, business interests, financial information, trade secrets and any other information that could be used against the Nation or those duly authorized to represent its interests.

217.4-2. *Amendment of Documents.* The following documents shall be amended as required in order to implement this law:

(a) The Nation's laws, rules and policies governing employment.

(1) Prospective employees shall disclose whether or not they have any conflicts of interest as defined in this law.

(2) Current employees shall disclose existing conflicts of interest, if any.

(b) Persons or organizations contracting with the Nation shall include a provision in their contract reciting the prohibition against undisclosed conflicts of interest.

(c) The Oneida Nation Secretary shall inform all elected officials, officers, political appointees, and elected or appointed members of the existence of this law in writing. All elected officials, officers, political appointees, and elected or appointed members shall disclose any conflicts of interest.

217.4-3. *Forms.* Forms shall be prepared upon which disclosures of conflicts which exist may be listed and returned to the Oneida Business Committee for action as indicated in this law. The Oneida Law Office shall be responsible for creating a standard form and any specialized forms required by this law. The Nation's Human Resource Department and the Office of the Oneida Nation Secretary shall be responsible for distributing and maintaining conflict of interest disclosure forms.

(a) The Nation's Human Resource Department shall collect conflict of interest disclosure forms from all employees on an annual basis. Additionally, an employee shall disclose a conflict of interest as soon as the conflict arises.

(b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms from all elected officials, officers, political appointees, and elected and appointed members on an annual basis. Additionally, an elected official, officer, political appointee, or elected or appointed member shall disclose a conflict of interest as soon as the conflict arises.

217.5. ~~Penalties for Non-Disclosure of a Conflict~~ Organizational Conflicts of Interest

~~217.5-1. Employees.~~ 217.5-1. Presumed Organizational Conflict of Interest. It is presumed that there is an organizational conflict of interest any time that a business owned by the Nation or an employee of the Nation seeks to contract with the Nation.

217.5-2. Maintaining Objectivity and Equal Access to Information. The Nation shall maintain objectivity in contracting and shall provide all potential and actual contractors with equal access to information. Should an employee of the Nation also be an employee, officer, director, or agent of any business owned by the Nation, the said employee shall be restricted from participating in any part of the contract process, including but not limited to the bidding, selection, award and administration, for that business.

(a) In the event that an employee has knowledge and experience that is critical to a contract and is restricted from participation based on an organizational conflict of

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interest, the said employee may only participate if the Nation and the contractor execute a conflict of interest mitigation plan.

(b) An organizational conflict of interest mitigation plan shall require the conflicted employee's participation be limited to the specific components of the project/contract that require the employee's knowledge and/or experience.

217.5-3. *Biased Ground Rules.* Should the Nation contract with a business it owns to prepare ground rules for a subsequent project/contract, including but not limited to preparing/writing specifications or work statements, said business may not compete for the subsequent project/contract.

217.5-4. *Employees Contracting with the Nation as Independent Contractors.* In addition to meeting the requirements of the Nation's independent contractor laws, policies and/or rules, employees that seek to contract with the Nation as an independent contractor may not, in any circumstance, whether as a prime contractor or a subcontractor:

(a) Contract with the Nation within the same scope for which they are employed by the Nation.

(b) Contract with any entity within the Nation that is within the same divisional budget and/or chain of command for which the employee is employed by the Nation.

(c) Submit a bid to contract with Nation without receiving and submitting with the bid written notice from the employee's supervisor providing consent and approval to bid and that such bid and/or potential resultant contract will not interfere with the employees current responsibilities to the Nation.

(d) Contract with the Nation if the employee is employed by any of the following areas:

(1) The Oneida Law Office;

(2) The Internal Audit Department; and/or

(3) The Oneida Finance Department.

217.6. Penalties for Non-Disclosure of a Conflict of Interest

217.6-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of interest shall be concluded within seven (7) days of the employee being placed on leave. A supervisor shall terminate an employee from his or her employment with the Nation when an investigation substantiates that the employee failed to disclose a conflict of interest.

217.56-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant to laws of the Nation regarding penalties.

217.56-3. *Elected or Appointed Members.* A member who fails to disclose a conflict of interest may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to removal pursuant to the Removal Law for elected members, or have their appointment terminated by the Oneida Business Committee pursuant to the law governing board, committees and commissions for appointed members.

217.56-4. *Political Appointees.* A political appointee that fails to disclose a conflict of interest may be subject to discipline at the discretion of the elected official the political appointee serves.

217.6-5-5. *Contracts.* An organization or a person who does not disclose conflicts of interest

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may be subject to termination of their contracts.

217.6-7. Prohibited Activities Resulting from a Disclosed Conflict of Interest

217.67-1. When an existing conflict of interest is disclosed, no employee, ~~consultant~~contractor, elected official, political appointee, officer, agent, or appointed or elected member may participate in:

(a) the selection, award, or administration of a contract, including contracts supported by a Federal award; and/or

(b) any other prohibited activities identified in any other law, policy or rule of the Nation.

217.67-2. Entities of the Nation shall develop standard operating procedures and/or work standards outlining further prohibited activities resulting from disclosed conflicts of interest and means by which a party can alleviate or mitigate the conflict of interest.

(a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it may become permissible for a party to participate under section 217.67-1(b) at the discretion of the division director and to the extent permitted by any applicable law, policy or rule. However, in all circumstances, such parties shall remain prohibited from participating under section 217.67-1(a).

217.7-8. Exemptions

217.78-1. Exemptions to this law are for the purpose of excluding activities of the Nation for which no conflict of interest can exist. These activities generally occur when the Nation is acting as a provider of services for which another will be making payments or reimbursing costs of providing the services. Exemptions shall be specifically identified within this law.

217.78-2. *Pharmacy*. This exemption shall be designed to relieve the Pharmacy and insurance providers from the requirements of the Conflict of Interest law while recognizing the unique relationship between the Pharmacy and insurance providers in third party payment agreements where no proprietary information of the Nation is provided to the insurance providers, and there is little or no opportunity for a conflict of interest between the insurance providers and the Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to subscribers of multiple insurance providers. This exemption shall apply solely to insurance providers seeking to enter into third party payment agreements with the Pharmacy.

End.

Adopted - BC-06-10-98-C

Emergency Amended - BC-04-12-06-JJ

Emergency Amended - BC-09-27-06-E

Emergency Amended - BC-08-10-16-M

Amended - BC-02-08-17-B



MEMORANDUM

TO: Legislative Operating Committee

FROM: Krystal L. John, Staff Attorney

DATE: May 17, 2017

SUBJECT: Transfer of Environmental Resource Board's Hearing Body Authority

When working on amendments to the Domestic Animal ordinance, the Legislative Operating Committee (LOC) sponsor, Tehassi Hill, indicated a preference that the Environmental Resource Board's (ERB's) hearing body authority be transferred to the Oneida Judiciary in accordance with the LOC's term goals.

Upon review, I agreed that such a transfer was in conformance with the LOC's earlier stated term goals to transfer hearing body authorities from individual boards, committees and commissions to the Judiciary. However, up until this point, the only authorities which have been transferred were voluntarily relinquished by the board, committee or commission (i.e. the Land Commission and the Trust Enrollment Committee). The LOC had not yet provided any direction to transfer hearing body authority in circumstances where it is the board's desire to retain such authority, as in ERB in this case.

I provided the opinion, which the sponsor accepted, that it would be cleanest if all hearing body authority was transferred at the same time. This would avoid confusion over which authorities ERB still retained and which had already transferred the Judiciary. Transferring all hearing authority at once further avoids the possibility that this LOC would transfer the hearing authority in some laws and the next LOC would decline completing the transfer process.

In order to transfer all of ERB's hearing body authority, the LOC is opening all of the following laws and focusing only on the transfer of hearing body authority and procedurally required updates (i.e. Tribe to Nation and inserting provisions of the Legislative Procedures Act that did not exist at the time those laws were adopted):

1. All Terrain Vehicle
2. Hunting, Fishing and Trapping
3. On-Site Disposal Ordinance
4. Public Use of Tribal Land
5. Tribal Environmental Response
6. Water Resource Ordinance
7. Well Abandonment

NOTICE OF
PUBLIC MEETING

TO BE HELD
Thursday, JUNE 15th at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: Transfer of Environmental Resource Board's Hearing Authority to the Judiciary

This is a proposal to amend the following laws to transfer the Environmental Resource Board's hearing authority to the Judiciary:

- ◆ All Terrain Vehicle
- ◆ Hunting, Fishing and Trapping
- ◆ On-Site Waste Disposal Ordinance
- ◆ Public Use of Tribal Land
- ◆ Tribal Environmental Response
- ◆ Water Resource Ordinance
- ◆ Well Abandonment

*In addition to the revisions necessary to transfer the hearing body authority, other minor and formatting revisions were included to update the laws to Legislative Operating Committee's current standards. Also, the Hunting, Fishing and Trapping law has been revised to provide clarity that non-member Indians and non-Indians that hunt, fish and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing and Trapping law.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL June 22, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting has not been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB has served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [See GTC Resolution 8-19-91-A].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [See GTC Resolution 01-07-13-B].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB have been consulted in the development of this legislative analysis. It is intended to meet with both ERB and the Judiciary; however, at the time this analysis was developed, a meeting has not yet been scheduled.

SECTION 4. PROCESS

A. Thus far, the proposed amendments have followed the process set forth in the Legislative Procedures Act.

B. A work meeting with ERB is scheduled for Wednesday, May 17, 2017 and a work meeting between ERB and the Judiciary will be scheduled in the near future.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

B. Minor changes, including formatting, have been made to these laws to comply with drafting style. These changes do not affect the content of these laws.

C. Please refer to the fiscal impact statement for any financial impacts.

60

61 **SECTION 9. ADDITIONAL AMENDMENTS**

62 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
63 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
64 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
65 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
66 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
67 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
68 may also be subject to State requirements. In addition, license and permit holders cannot utilize
69 hunting, fishing, or trapping privileges within the Reservation using a State license that would
70 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
71 *Fishing and Trapping, 4 O.C. 406.4-3*].

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Title 4. Environment and Natural Resources – Chapter 410**ALL-TERRAIN VEHICLE****Kwah Tsyok Nu Oʼnikasleghtoʼá Kayanlʼhsla***Just all over the place, the type of vehicles, their laws*

410.1. Purpose and Policy

410.2. Adoption, Amendment, Repeal

410.3. Definitions

410.4. Age Requirements

410.5. Rules of Operation

410.6. Enforcement

410.7. Sanctions

410.1-1. Purpose and Policy

410.1-1. The purpose of this law is to govern the safe use of all-terrain vehicles within the Tribal jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and the environment.

410.2. Adoption, Amendment, Repeal

~~410.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-6-16-04-B and amended by resolution _____.~~

~~410.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.~~

~~410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.~~

~~410.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.~~

~~410.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.~~

~~410.2-1. This law is adopted by the Oneida Business Committee under the authority granted by the Oneida General Tribal Council through the Constitution of the Oneida Tribe of Indians of Wisconsin.~~

~~410.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.~~

~~410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.~~

~~410.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this law.~~

410.3. Definitions

410.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein, or defined within any section, shall be used in their ordinary and everyday sense.

(a) “Agricultural purpose” means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or

nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(b) “All-terrain vehicle” means an engine-driven device which has a net weight of 900 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(c) “All-terrain vehicle route” means a highway, sidewalk, dirt or gravel trail, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction as authorized under this section.

(d) “All-terrain vehicle trail” means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(e) “Conservation Warden” shall mean an employee of the Oneida Conservation Department empowered by the Oneida Tribe of Indians of Wisconsin to enforce the provisions of this Law and regulations promulgated pursuant to this Law. The term Conservation Warden shall include an Officer of the Oneida Police Department.

(f) “Department” means the Oneida License Department.

(g) “Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways within the Reservation, parks and upon the grounds of Tribal schools.

(h) “Immediate family” means persons who are related as spouses, as siblings or as parent and child.

(i) “Implement of husbandry” means a vehicle or piece of equipment or machinery designed for agricultural purposes, used exclusively in the conduct of agricultural operations and used principally off the highway, or a trailer-mounted bulk liquid fertilizer container.

(j) “Land under the management and control of a person’s immediate family” means land owned or leased by the person or a member of the person’s immediate family over which the owner or lessee has management control. This term excludes land owned or leased by an organization of which the person or a member of the person’s immediate family is a member.

(k) “Operator” means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(l) “Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(m) “Protective Headgear” means a helmet that is specifically designed for motorcycle or all-terrain vehicle use that meets the United States Department of Transportation standards for motorcycle helmets. A bicycle helmet is not an acceptable protective helmet.

(n) “Public utility” means any corporation, company, individual or association which

furnishes products or services to the public including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(o) “Reservation” shall mean all the lands and waters within the exterior boundaries designated by the Treaty with the Oneida. 7 Stat. 566 (1838).

(p) “Residential area” shall mean a district where people live; occupied primarily by private residences.

(q) “Registration documentation” means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

(r) “Right of way” means the privilege of the immediate use of the roadway.

(s) “Small all-terrain vehicle” means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(t) “Tribal Lands” means all lands within the exterior boundaries of the Oneida Indian reservation as defined by the 1838 Treaty, or all land located in Wisconsin which is held in Trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin.

(u) “Tribe Nation” means the Oneida Tribe of Indians of Wisconsin Nation.

(v) “Used exclusively on private property” means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

410.4. Age Requirements

410.4-1.

(a) The minimum age to operate an all-terrain vehicle is twelve (12) years of age unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the Tribe Nation and he or she is accompanied by his or her parent.

(b) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age.

410.5. Rules of Operation

410.5-1. No person shall operate an all-terrain vehicle:

(a) In any careless way so as to endanger the safety of himself or herself or the property or the safety of another person or property.

(b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(c) On Tribal lands without the consent of the Tribe Nation or Indian owner. Failure to post Tribal lands does not imply consent for all-terrain vehicle use.

(d) With any firearms in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case, within the Reservation and on public highways.

(e) To drive, pursue, take, catch, kill, hunt, trap or harvest any animal except as a part of normal farming operations involving the driving of livestock.

(f) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent.

(g) On the frozen surface of public waters within 100 feet of a person not in or on an all-

terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(h) On any pathways or sidewalks specified for pedestrian use.

(i) On any public, church, school property, cemetery, burial ground, campground, park or business properties, airport or landing facility without consent.

(j) Without wearing the required eye protection such as goggles, sunglasses, or glasses.

(k) In any streams or creeks.

(l) On any project or program assigned land.

(m) In a manner which violates rules promulgated by the [TribeNation](#).

(n) In excess of 10 mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle.

(o) Outside or off of any designated all-terrain route or trail.

410.5-2. Rental of All Terrain Vehicles.

(a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

(1) Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

(2) Rent or lease an all-terrain vehicle to a person under 16 years of age.

(3) Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has required protective headgear

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The [Tribe-Environmental Resource Board](#) may promulgate rules to establish minimum standards for the instruction given under par. (a)1.

410.5-3. -Use of Headgear. No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The all-terrain vehicle is being operated for an agricultural purpose.

410.5-4. -Operation on or near highways. All-terrain vehicles may not be operated on any highways within the exterior boundaries of the [TribeNation](#), except for the following:

(a) All-terrain vehicles owned by the [TribeNation](#), a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the [TribeNation](#), a municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

(b) The [TribeNation](#), a county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle and/or public events.

(c) To cross a highway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

(d) On any roadway which is seasonally not maintained for motor vehicle traffic.

Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(e) To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to crossing and yields to pedestrians, and electric personal assistive mobility devices using the highway.

(f) On highways designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a highway which is an all-terrain vehicle route is authorized only for the extreme right side of the highway except that left turns may be made from any part of the highway which is safe given prevailing conditions.

(g) On highways if the all-terrain vehicle is an implement of husbandry, if used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use.

410.5-5. Operation adjacent to highways. All-terrain vehicles may be operated adjacent to a highway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

(a) At a distance of 10 feet or more from the highway along U.S. numbered highways, state and county highways, Tribal roads, town roads, and BIA roads.

(b) Outside of the highways along town highways.

(c) During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

(d) Not in excess of the speed limits of the adjacent highway and not to exceed 35 miles per hour.

(e) With due regard to safety and in compliance with rules promulgated by the [TribeNation](#).

(f) Not at a rate of speed that is unreasonable or improper under the circumstances.

410.5-6. Equipment requirements.

(a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

410.5-7. Residential Areas.

(a) All-terrain operators in the residential areas:

(1) Are prohibited from operating all-terrain vehicles from 9pm-6am.

(2) Shall not operate all-terrain vehicles in excess of 15 miles per hour.

(3) Shall not operate all-terrain vehicles on sidewalks or yards, unless the operator is on his or her own land or leases the land.

(4) Shall use extra caution, including yielding right of way, whenever pedestrians or other motor vehicle traffic are in the near vicinity.

(5) Shall not cause excessive noise with all-terrain vehicles.

(6) Shall not use the public driveways of Tribal service providers, unless conducting business.

(7) Shall not use the Tribal residential area as a riding area. In the Tribal residential area, all-terrain vehicles should only be utilized to get to and from another area.

(A) Operators shall use the shortest distances when entering and exiting the Tribal residential area. For example, operators going to a residence within the Tribal residential area must take the most direct route to the residence.

410.5-8. Accidents.

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident within 10 days after the accident to the Oneida Police Department.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

410.5-9. Routes and Trails.

(a) The [Tribe Nation](#) shall encourage and supervise a system of all-terrain vehicle routes and trails. The Division of Land Management, in cooperation with the Conservation Department, shall establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) The [Tribe Nation](#) may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(c) The [Tribe Nation](#) shall establish uniform all-terrain vehicle route and trail signs and standards.

(d) Interference with signs and standards are prohibited.

(1) No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the [Tribe Nation](#), the state, any municipality or any authorized individual.

(2) No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the [Tribe Nation](#) for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

(e) Interference with trails prohibited. No person may intentionally obstruct or interfere

with an all-terrain vehicle route or trail.

~~410.6. Enforcement.~~

~~410.6-1. Conservation Wardens shall have the authority to enforce this Law and are authorized to issue citations for a violation(s) of the All-Terrain Vehicle Law to an alleged violator.~~

~~(a) The Conservation Warden shall identify himself/herself and title.~~

~~(b) The Conservation Warden shall give the alleged violator the citation and shall retain a copy.~~

~~(c) The citation shall include:~~

~~(1) the violation.~~

~~(2) the penalties and/or fines.~~

~~(3) the date, time, and place of the hearing.~~

~~410.6-2. Environmental Resources Board Hearing. The Board shall hold any and all hearings on alleged violations of this Law in accordance with:~~

~~(a) The Administrative Procedures Act; and~~

~~(b) The By-Laws of the Board.~~

~~410.76. Sanctions.~~

~~410.76-1. The following sanctions may be imposed for violations of the All-Terrain Vehicle Law:~~

~~(a) All fines and forfeitures shall be paid to the ~~Tribe~~Nation.~~

Violation		Sanction
(a) Unlawful rental of all-terrain vehicle	sec. 5-2.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(b) Operating all-terrain vehicle in a careless manner	sec. 5-1(a)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(c) Operating all-terrain vehicle on the private property of another without consent	sec. 5-1(b)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$130.00
(d) Operating all-terrain vehicle on Tribal Lands without consent	sec. 5-1(c)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00 Non-Members will be turned over to Oneida Police Department or County Sheriff's Department
(e) Transporting loaded or uncased firearm or a strung or uncased bow on all-terrain vehicle	sec. 5-1(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$500.00
(f) Drive, pursue, take, catch, kill, hunt, trap or harvest any animal	sec. 5-1(e)	1 st Violation: \$25.00 2 nd Violation: \$50.00

from an all-terrain vehicle		3 rd Violation: \$250.00
(g) Operating all-terrain vehicle within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent	sec. 5-1(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(h) Operating all-terrain vehicle on frozen surface of public waters within 100 feet of a person or fishing shanty at a speed exceeding 10 miles per hour	sec. 5-1(g)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(i) Operate/ride all-terrain vehicle without protective headgear	sec. 5-3.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(j) Illegal operation of all-terrain vehicles on or in the vicinity of highways	sec. 5-4.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(k) All-terrain equipment violations	sec. 5-7.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(l) Failure to report all-terrain vehicle accident	sec. 5-9.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(m) Interference with all-terrain vehicle route or trail signs and standards	sec. 5-10(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(o) Operating on a church property, school property, cemetery, burial ground, campground, parks, business, airport or landing facility without permission	sec. 5-1(i)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$200.00
(p) Operating at a speed that is unreasonable or improper	sec. 5-6(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(q) Operating all-terrain vehicle in or on project or program assigned lands	sec. 5-1(l)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(r) Operating in excess of 10mph when traveling within 100 feet of a	sec. 5-1(n)	1 st Violation: \$25.00 2 nd Violation: \$50.00

person not on an all-terrain vehicle, snowmobile or motorcycle		3 rd Violation: \$100.00
(s) Owner permitting operation of all-terrain vehicle by person who does meet age requirements	sec. 4-1.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$140.00
(t) Operating an all-terrain vehicle outside or off the designated route or trail	sec. 5-1(o)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(u) Operating an all-terrain vehicle in Tribal Residential Areas	sec.5-8.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(v) Operating on any pathways or sidewalks specified for pedestrian use	sec. 5-1(h)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(w) Operating all-terrain vehicle without eye protection	sec. 5-1(j)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(x) Operating in any streams or creeks	sec. 5-1(k)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(y) Illegally operating on or adjacent to highways	sec. 5-5.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(z) Obstructing trail.	sec. 5-10 (e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00

410.7. Violations, Enforcement and Appeals

410.7-1. Citations. Citations for the violation of this law and/or orders issued pursuant to this law may include sanctions, fines, penalties and conditional and other orders in accordance with the schedule developed under section 410.6-1. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

410.7-2. Hearing and Appeals of Contested Actions. All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after

the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

~~410.7-2. All fines assessed under this section shall be paid within sixty days of the judgment of the final hearing body hearing and appeal, or otherwise within sixty days of the issuance of the citation.~~

~~410.7-3. Community service may be substituted for fines for any of the above violations at the discretion of the Board at the rate of one hour per \$10.00 of the fine.~~

~~410.7-4. All persons are encouraged to report violations of these regulations to the Oneida Police Department or Oneida Conservation Department. Any information received regarding violations shall be kept confidential by both Departments.~~

End.

Emergency Adoption - BC-9-24-03-A

Emergency Adoption Extension - BC-3-31-04-C

Permanent Adoption - BC-6-16-04-B

2017 06 15 – Clean

Title 4. Environment and Natural Resources – Chapter 410**ALL-TERRAIN VEHICLE****Kwah Tsyok Nu Oʼnikasleghtoʼta Kayanlʼhsla***Just all over the place, the type of vehicles, their laws*

410.1. Purpose and Policy

410.2. Adoption, Amendment, Repeal

410.3. Definitions

410.4. Age Requirements

410.5. Rules of Operation

410.6. Enforcement

410.7. Sanctions

410.1-1. Purpose and Policy

410.1-1. The purpose of this law is to govern the safe use of all-terrain vehicles within the Tribal jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and the environment.

410.2. Adoption, Amendment, Repeal

410.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-6-16-04-B and amended by resolution _____.

410.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

410.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

410.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

410.3. Definitions

410.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein, or defined within any section, shall be used in their ordinary and everyday sense.

(a) “Agricultural purpose” means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(b) “All-terrain vehicle” means an engine-driven device which has a net weight of 900 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(c) “All-terrain vehicle route” means a highway, sidewalk, dirt or gravel trail, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction as authorized under this section.

(d) “All-terrain vehicle trail” means a marked corridor on public property or on private

lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(e) “Conservation Warden” shall mean an employee of the Oneida Conservation Department empowered by the Oneida Tribe of Indians of Wisconsin to enforce the provisions of this Law and regulations promulgated pursuant to this Law. The term Conservation Warden shall include an Officer of the Oneida Police Department.

(f) “Department” means the Oneida License Department.

(g) “Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways within the Reservation, parks and upon the grounds of Tribal schools.

(h) “Immediate family” means persons who are related as spouses, as siblings or as parent and child.

(i) “Implement of husbandry” means a vehicle or piece of equipment or machinery designed for agricultural purposes, used exclusively in the conduct of agricultural operations and used principally off the highway, or a trailer-mounted bulk liquid fertilizer container.

(j) “Land under the management and control of a person’s immediate family” means land owned or leased by the person or a member of the person’s immediate family over which the owner or lessee has management control. This term excludes land owned or leased by an organization of which the person or a member of the person’s immediate family is a member.

(k) “Operator” means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(l) “Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(m) “Protective Headgear” means a helmet that is specifically designed for motorcycle or all-terrain vehicle use that meets the United States Department of Transportation standards for motorcycle helmets. A bicycle helmet is not an acceptable protective helmet.

(n) “Public utility” means any corporation, company, individual or association which furnishes products or services to the public including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(o) “Reservation” shall mean all the lands and waters within the exterior boundaries designated by the Treaty with the Oneida. 7 Stat. 566 (1838).

(p) “Residential area” shall mean a district where people live; occupied primarily by private residences.

(q) “Registration documentation” means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

(r) “Right of way” means the privilege of the immediate use of the roadway.

(s) “Small all-terrain vehicle” means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(t) "Tribal Lands" means all lands within the exterior boundaries of the Oneida Indian reservation as defined by the 1838 Treaty, or all land located in Wisconsin which is held in Trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin.

(u) "Nation" means the Oneida Nation.

(v) "Used exclusively on private property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

410.4. Age Requirements

410.4-1.

(a) The minimum age to operate an all-terrain vehicle is twelve (12) years of age unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the Nation and he or she is accompanied by his or her parent.

(b) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age.

410.5. Rules of Operation

410.5-1. No person shall operate an all-terrain vehicle:

(a) In any careless way so as to endanger the safety of himself or herself or the property or the safety of another person or property.

(b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(c) On Tribal lands without the consent of the Nation or Indian owner. Failure to post Tribal lands does not imply consent for all-terrain vehicle use.

(d) With any firearms in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case, within the Reservation and on public highways.

(e) To drive, pursue, take, catch, kill, hunt, trap or harvest any animal except as a part of normal farming operations involving the driving of livestock.

(f) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent.

(g) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(h) On any pathways or sidewalks specified for pedestrian use.

(i) On any public, church, school property, cemetery, burial ground, campground, park or business properties, airport or landing facility without consent.

(j) Without wearing the required eye protection such as goggles, sunglasses, or glasses.

(k) In any streams or creeks.

(l) On any project or program assigned land.

(m) In a manner which violates rules promulgated by the Nation.

(n) In excess of 10 mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle.

(o) Outside or off of any designated all-terrain route or trail.

410.5-2. Rental of All Terrain Vehicles.

(a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

(1) Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

(2) Rent or lease an all-terrain vehicle to a person under 16 years of age.

(3) Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has required protective headgear

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The Environmental Resource Board may promulgate rules to establish minimum standards for the instruction given under par. (a)1.

410.5-3. *Use of Headgear.* No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The all-terrain vehicle is being operated for an agricultural purpose.

410.5-4. *Operation on or near highways.* All-terrain vehicles may not be operated on any highways within the exterior boundaries of the Nation, except for the following:

(a) All-terrain vehicles owned by the Nation, a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the Nation, a municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

(b) The Nation, a county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle and/or public events.

(c) To cross a highway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

(d) On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(e) To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to crossing and yields to pedestrians, and electric personal assistive mobility devices using the highway.

(f) On highways designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a highway which is an all-terrain vehicle route is authorized only for the extreme right side of the highway except that left turns may be made from any part of the highway

which is safe given prevailing conditions.

(g) On highways if the all-terrain vehicle is an implement of husbandry, if used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use.

410.5-5. *Operation adjacent to highways.* All-terrain vehicles may be operated adjacent to a highway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

(a) At a distance of 10 feet or more from the highway along U.S. numbered highways, state and county highways, Tribal roads, town roads, and BIA roads.

(b) Outside of the highways along town highways.

(c) During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

(d) Not in excess of the speed limits of the adjacent highway and not to exceed 35 miles per hour.

(e) With due regard to safety and in compliance with rules promulgated by the Nation.

(f) Not at a rate of speed that is unreasonable or improper under the circumstances.

410.5-6. *Equipment requirements.*

(a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

410.5-7. *Residential Areas.*

(a) All-terrain operators in the residential areas:

(1) Are prohibited from operating all-terrain vehicles from 9pm-6am.

(2) Shall not operate all-terrain vehicles in excess of 15 miles per hour.

(3) Shall not operate all-terrain vehicles on sidewalks or yards, unless the operator is on his or her own land or leases the land.

(4) Shall use extra caution, including yielding right of way, whenever pedestrians or other motor vehicle traffic are in the near vicinity.

(5) Shall not cause excessive noise with all-terrain vehicles.

(6) Shall not use the public driveways of Tribal service providers, unless conducting business.

(7) Shall not use the Tribal residential area as a riding area. In the Tribal residential area, all-terrain vehicles should only be utilized to get to and from another area.

(A) Operators shall use the shortest distances when entering and exiting the Tribal residential area. For example, operators going to a residence within the Tribal residential area must take the most direct route to the

residence.

410.5-8. Accidents.

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident within 10 days after the accident to the Oneida Police Department.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

410.5-9. Routes and Trails.

(a) The Nation shall encourage and supervise a system of all-terrain vehicle routes and trails. The Division of Land Management, in cooperation with the Conservation Department, shall establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) The Nation may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(c) The Nation shall establish uniform all-terrain vehicle route and trail signs and standards.

(d) Interference with signs and standards are prohibited.

(1) No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the Nation, the state, any municipality or any authorized individual.

(2) No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the Nation for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

(e) Interference with trails prohibited. No person may intentionally obstruct or interfere with an all-terrain vehicle route or trail.

410.6. Sanctions.

410.6-1. The following sanctions may be imposed for violations of the All-Terrain Vehicle Law:

(a) All fines and forfeitures shall be paid to the Nation.

Violation		Sanction
(a) Unlawful rental of all-terrain vehicle	sec. 5-2.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(b) Operating all-terrain vehicle in a careless manner	sec. 5-1(a)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00

(c) Operating all-terrain vehicle on the private property of another without consent	sec. 5-1(b)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$130.00
(d) Operating all-terrain vehicle on Tribal Lands without consent	sec. 5-1(c)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00 Non-Members will be turned over to Oneida Police Department or County Sheriff's Department
(e) Transporting loaded or uncased firearm or a strung or uncased bow on all-terrain vehicle	sec. 5-1(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$500.00
(f) Drive, pursue, take, catch, kill, hunt, trap or harvest any animal from an all-terrain vehicle	sec. 5-1(e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(g) Operating all-terrain vehicle within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent	sec. 5-1(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(h) Operating all-terrain vehicle on frozen surface of public waters within 100 feet of a person or fishing shanty at a speed exceeding 10 miles per hour	sec. 5-1(g)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(i) Operate/ride all-terrain vehicle without protective headgear	sec. 5-3.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(j) Illegal operation of all-terrain vehicles on or in the vicinity of highways	sec. 5-4.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(k) All-terrain equipment violations	sec. 5-7.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(l) Failure to report all-terrain vehicle accident	sec. 5-9.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(m) Interference with all-terrain vehicle route or trail signs and	sec. 5-	1 st Violation: \$25.00 2 nd Violation: \$50.00

standards	10(d)	3 rd Violation: \$250.00
(o) Operating on a church property, school property, cemetery, burial ground, campground, parks, business, airport or landing facility without permission	sec. 5-1(i)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$200.00
(p) Operating at a speed that is unreasonable or improper	sec. 5-6(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(q) Operating all-terrain vehicle in or on project or program assigned lands	sec. 5-1(l)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(r) Operating in excess of 10mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle	sec. 5-1(n)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(s) Owner permitting operation of all-terrain vehicle by person who does meet age requirements	sec. 4-1.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$140.00
(t) Operating an all-terrain vehicle outside or off the designated route or trail	sec. 5-1(o)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(u) Operating an all-terrain vehicle in Tribal Residential Areas	sec.5-8.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(v) Operating on any pathways or sidewalks specified for pedestrian use	sec. 5-1(h)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(w) Operating all-terrain vehicle without eye protection	sec. 5-1(j)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(x) Operating in any streams or creeks	sec. 5-1(k)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(y) Illegally operating on or adjacent to highways	sec. 5-5.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(z) Obstructing trail.	sec. 5-10	1 st Violation: \$25.00

	(e)	2 nd Violation: \$50.00 3 rd Violation: \$150.00

410.7. Violations, Enforcement and Appeals

410.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include sanctions, fines, penalties and conditional and other orders in accordance with the schedule developed under section 410.6-1. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

410.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Emergency Adoption - BC-9-24-03-A
Emergency Adoption Extension - BC-3-31-04-C
Permanent Adoption - BC-6-16-04-B

Title 4. Environment and Natural Resources – Chapter 406
HUNTING, FISHING AND TRAPPING
**Lutol
*Our laws concerning hunting, fishing and trapping***

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
406.3.	Definitions	406.8.	Wildlife Damage and Nuisance Control
406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

406.1. Purpose and Policy

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

(a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and

(b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

406.2. Adoption, Amendment, Repeal

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and BC-01-25-17-D.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or

threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.¹

406.4. Jurisdiction

406.4-1. This law applies to the following persons:

- (a) All Tribal members,
- (b) All non-member Indians, ~~and~~
- (c) All non-Indians who:
 - ~~(1) enter Tribal land, or~~
 - ~~(2) apply for and receive a license and/or permit, and~~
- (d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

- (a) within the boundaries of the reservation, and
- (b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-3. ~~—Lack of State Jurisdiction.—~~ The Nation ~~and the federal government have sole~~ has jurisdiction over the management and regulation of the Nation’s natural resources. Accordingly, licenses, permits, tags ~~However this law shall not negate the jurisdiction of the State of Wisconsin in certain instances involving non-member Indians and non-Indians. Thus, to hunt, fish, or trap~~

¹ For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

on tribal land, non-member Indians and the like issued by non-Indians shall adhere to the state have no legal effect on lands over which Nation's license, permit, and tag requirements and may also be subject to the Nation exercises its jurisdiction under Section 406.4 2. requirements of the State of Wisconsin. License and permit holders may not exercise any hunting, fishing, or tapping privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

406.5. Administration and Supervision

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

(a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.

(b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.

(c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.

(d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.

(e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.

(f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:

(1) the taking of wildlife;

(2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.

(g) Establish methods for checking persons into and out of areas specified under subsection (f) above.

(h) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.

(i) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:

(1) bait,;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

(j) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.

(k) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.

(l) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.

(m) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(n) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules both on ERB's [the Nation's](#) website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

(a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.

(b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.

(c) Work to prevent persons from violating this law and/or the corresponding rules.

(d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

(a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:

(1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.

(2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

- (E) rabbit;
(F) squirrel; and
(G) any nuisance animal that is not an endangered or threaten species and is also not a regulated or protected species.
- (b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:
- (1) *Fishing Only Sportsman License*. A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.
- (A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.
- (B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.
- 406.6-2. *Ceremonial and/or Feast Permit*. Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.
- (a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.
- (b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:
- (1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;
- (2) The agent of the group/organization is a Tribal member;
- (3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and
- (4) The hunt takes place on the reservation.
- (c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.
- (d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.
- 406.6-3. *Other Permits, Tags and Stamps*. In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.
- 406.6-4. It is unlawful for any person to:
- (a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or
- (b) Aid another in fraudulently securing a license or permit.
- 406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another

person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. *Denial of a License or Permit.*

(a) The Department may decline to issue a license and/or permit to an applicant if:

(1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or

(iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

406.7. General Requirements

406.7-1. Persons may not:

(a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.

(b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on

the reservation's lands and waters.

(c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass

tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

406.7-5. *Health Advisory.* ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

406.8. Wildlife Damage and Nuisance Control

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules , including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit.* A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the

Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required.* A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver.* A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies.* Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents.* A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report.* Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall

promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

406.9. Hunting

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

(1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;

(2) Across any roadway; or

(3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

(a) Hunt with the use of aircraft;

(b) Hunt within fifty (50) feet of the center of a paved road;

(c) Hunt from a vehicle;

(d) Hunt while under the influence of alcohol or a controlled substance;

(e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;

(f) Shine between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;

(g) Hunt in a party of more than ten (10) persons;

(h) Hunt with, or possess while hunting:

- (1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;
- (2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated permit;
- (3) A handgun with a barrel length of less than five (5) inches;
- (4) A concealed handgun without a valid permit from the State of Wisconsin; and/or
- (5) Any of the following without a valid federal permit:
- (A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;
 - (B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;
 - (C) A fully-automatic firearm;
 - (D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

- (1) Possess a valid hunting license;
- (2) Be eligible for the permits for which the person is named the designated hunter; and
- (3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may hunt for the number of permittees as authorized by the rules developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and fourteen (14) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

406.10. Enforcement and Penalties

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess

³ See footnote 2.

firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by ~~requesting a hearing before ERB.~~ filing a complaint with the Judiciary Trial Court naming the Department.

~~(a) In order to be considered timely, the person contesting an action of the Department shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.~~

~~(b) ERB shall schedule a hearing for all timely filed appeal, and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.~~

~~(c) ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.~~

~~(d) ERB's determination related to a license and/or permit is final; no further review is available.~~

406.10-5. *Contested Action Hearings.* All citations, orders and declarations issued pursuant to this law shall include a ~~prehearing date~~ pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) ~~calendar~~ days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the ~~Environmental Resource Board~~ Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. ~~For The~~ Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ~~ERB shall schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing.~~ In addition to scheduling requested hearings, ~~ERB~~ the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

~~(a) ERB shall conduct prehearings and hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.~~

~~(b) Community Service.~~ Community service may be substituted for fines at ~~ERB's~~ the Judiciary's discretion, provided that, if so substituted, ~~ERB~~ the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

~~(c) Allocation of Citation Revenue.~~ (b) Allocation of Citation Revenue. All fines and penalties issued by citations are

payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

~~(d) (c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

~~(d) Pursuing Payment of a Citation. ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.~~

~~(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

End.

Adopted - BC-8-31-94-C
Adopted - BC-4-24-96-A
Adopted - BC-07-22-98-A
Amended - BC-09-13-00-D
Amended - BC-6-04-03-A
Amended - BC-6-30-04-I
Amended - BC-7-13-05-E
Amended - BC-8-29-07-F
Amended - BC-06-24-09-E
Amended - BC-08-26-10-I
Emergency Amended - BC-06-22-11-H (Expired)
Amended – BC-12-14-11-E
Amended – BC-05-22-13-A
Amended – BC-01-25-17-D

Title 4. Environment and Natural Resources – Chapter 406
HUNTING, FISHING AND TRAPPING
Lutol@tha>, Latsyw@aha> O>kh@le Atlist@y< Tsi> Kayanl^hsla
Our laws concerning hunting, fishing and trapping

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
406.3.	Definitions	406.8.	Wildlife Damage and Nuisance Control
406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

406.1. Purpose and Policy

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

(a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and

(b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

406.2. Adoption, Amendment, Repeal

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and BC-01-25-17-D.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or

threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.¹

406.4. Jurisdiction

406.4-1. This law applies to the following persons:

- (a) All Tribal members,
- (b) All non-member Indians,
- (c) All non-Indians who apply for and receive a license and/or permit, and
- (d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

- (a) within the boundaries of the reservation, and
- (b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-3. *Jurisdiction.* The Nation has jurisdiction over the management and regulation of the Nation’s natural resources. However this law shall not negate the jurisdiction of the State of Wisconsin in certain instances involving non-member Indians and non-Indians. Thus, to hunt, fish, or trap on tribal land, non-member Indians and non-Indians shall adhere to the Nation’s license, permit, and tag requirements and may also be subject to the requirements of the State of Wisconsin. License and permit holders may not exercise any hunting, fishing, or tapping

¹ For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

406.5. Administration and Supervision

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

(a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.

(b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.

(c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.

(d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.

(e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.

(f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:

(1) the taking of wildlife;

(2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.

(g) Establish methods for checking persons into and out of areas specified under subsection (f) above.

(h) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.

(i) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:

(1) bait;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

(j) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.

(k) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.

(l) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.

(m) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(n) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules on the Nation's website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

(a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.

(b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.

(c) Work to prevent persons from violating this law and/or the corresponding rules.

(d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

(a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:

(1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.

(2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any nuisance animal that is not an endangered or threaten species and is also not a regulated or protected species.

(b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified

hunter safety course to be eligible for a sportsman license, except that:

(1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.

(A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.

(B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.

406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.

(a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.

(b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:

(1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;

(2) The agent of the group/organization is a Tribal member;

(3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and

(4) The hunt takes place on the reservation.

(c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.

(d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.

406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.

406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and

location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. Denial of a License or Permit.

(a) The Department may decline to issue a license and/or permit to an applicant if:

(1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or

(iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

406.7. General Requirements

406.7-1. Persons may not:

(a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.

(b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.

(c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

406.7-5. *Health Advisory.* ERB and the Department shall ensure that all hunting and fishing

rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

406.8. Wildlife Damage and Nuisance Control

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules, including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit*. A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required*. A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver*. A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies*. Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents*. A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report*. Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access*. Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals*. The following applies to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than 4 O.C. 406 – page 10

one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

- (1) Elders;
- (2) Disabled persons; and
- (3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

406.9. Hunting

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

- (1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;
- (2) Across any roadway; or
- (3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

- (a) Hunt with the use of aircraft;
- (b) Hunt within fifty (50) feet of the center of a paved road;
- (c) Hunt from a vehicle;
- (d) Hunt while under the influence of alcohol or a controlled substance;
- (e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;
- (f) Shine between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;
- (g) Hunt in a party of more than ten (10) persons;
- (h) Hunt with, or possess while hunting:
 - (1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;
 - (2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated permit;
 - (3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin;
and/or

(5) Any of the following without a valid federal permit:

(A) A shotgun that has a barrel length of less than eighteen (18) inches or
an overall length of less than twenty-six (26) inches;

(B) A rifle that has a barrel length of less than sixteen (16) inches or an
overall length of less than twenty-six (26) inches;

(C) A fully-automatic firearm;

(D) Any mechanism designed to muffle, silence or minimize the report of
any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting
and injures another person, shall render or attempt to obtain necessary medical assistance,
provide the injured person with his or her name and contact information including address, and
report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap
on behalf of the permittee in the event that the permittee is physically or legally unable to take
pursuant to his or her own permit, provided that, the designated hunter shall provide his or her
name and contact information to the Department along with a signed statement from the original
permittee naming the designated hunter. The designated hunter shall receive the Department's
approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

(1) Possess a valid hunting license;

(2) Be eligible for the permits for which the person is named the designated
hunter; and

(3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may hunt for the number of permittees as authorized by the rules
developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original
permittee; the designated hunter shall transfer any wildlife taken by designation to the
original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and fourteen (14) years old may only hunt if
they have obtained the required license and permits and are under the immediate
supervision of a parent, legal guardian or a responsible adult to which a parent or legal
guardian has delegated his or her supervisory responsibilities. Adults accompanying
youth hunters pursuant to this section shall remain within voice and sight contact of the
youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or
eleven (11) years old may hunt if they have a mentor present while hunting and have
obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than
ten (10) years of age may accompany a mentor while hunting, provided that youth under
the age of ten (10) may not use a weapon during the hunt.

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

406.10. Enforcement and Penalties

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

406.10-5. *Contested Action Hearings.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted - BC-8-31-94-C

Amended – BC-01-25-17-D

Adopted - BC-4-24-96-A

Adopted - BC-07-22-98-A

Amended - BC-09-13-00-D

Amended - BC-6-04-03-A

Amended - BC-6-30-04-I

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Amended - BC-8-29-07-F

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Emergency Amended - BC-06-22-11-H (Expired)

Amended – BC-12-14-11-E

Amended – BC-05-22-13-A

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Title 4. Environment and Natural Resources - Chapter 407**ON-SITE WASTE DISPOSAL ~~ORDINANCE~~****Tsi? Yeyakotyetáhkwa Olihwá'ke*****The matters concerning where the garbage is kept***~~407.1. Introduction~~~~407.2. Adoption, Amendment and Repeal~~~~407.3. Definitions~~~~407.4. General Requirements~~~~407.5. Permits and Applications~~~~407.6. Inspections~~~~407.7. Administration and Enforcement~~~~407.1. Introduction~~~~407.2. General Requirements~~~~407.3. Permits and Applications~~~~407.4. Inspections~~~~407.5. Administration and Enforcement~~**407.1. Introduction.1. Introduction**

401.1-1. Applicability. This ~~Ordinance~~ law shall apply to all Oneida ~~Tribal~~ Entities, the Oneida ~~Tribe~~ Nation itself, and members of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation within the exterior boundaries of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation Reservation.

407.1-2. Purpose. The purpose of this ~~Ordinance~~ law is to establish regulations to ensure that private on-site sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety. The regulations herein will set forth procedures for administration of the program; general requirements for proper siting, design, installation, inspection, and maintenance of the systems; limitations of private systems; and enforcement mechanisms and procedures. The ultimate intent of this ~~ordinance~~ law is to support the Oneida belief of taking care of Mother Earth. As unforeseen events may arise which are not specifically addressed in this ~~ordinance~~ law, this stated intent, along with the following basic principles, should define a course of action for unforeseen events.

(a) NEED-Every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste.

(b) PUBLIC SEWERS-When public sewers become available to any building intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not exceed one (1) year. The owner shall be required to connect to public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection is available, the owner shall be required to connect sooner than the one (1) year date, and the connection shall be made from the private sewage system and be connected to the public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection sooner than the one (1) year date, and the connection shall be made according to the contractor's construction schedule. The building sewer shall be disconnected from the private sewage system and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with chapter NR 113, Wisconsin Administrative Code. The top or the entire tank shall be removed and the remaining portion of the tank

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or excavation shall be immediately filled with clean, suitable soil material.

(c) DISCHARGES/FAILING SYSTEMS-Every private sewage system shall be designed, located and constructed to prevent ponding of effluent within the soil absorption system or any discharge or sewage into drain tiles, onto the ground surface, into the structure served, or into the surface waters or groundwater within the exterior boundaries or adjacent to the Oneida ~~Tribe of Indians of Wisconsin~~ Nation Reservation including zones of seasonal soil saturation.

(d) MAINTENANCE-Every private sewage system shall be adequately maintained.

(e) NUISANCE-Every private sewage system shall be designed and constructed to adequately dispose of all the wastewater generated in the structure or facility it is serving.

407.1-3. This Ordinance is adopted 2. Adoption, Amendment and implemented through Repeal

407.2-1. This law was adopted by the authority granted [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-10-28-88-A and amended by resolution _____.

407.2-2. This law may be amended or repealed by the Oneida ~~Tribe of Indians of Wisconsin~~ Business Committee and/or Oneida General Tribal Council pursuant to the Oneida procedures set out in the Legislative Procedures Act.

407.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

407.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

407.2-5. This law is adopted under authority of the Constitution, ~~Part 4, Section~~ of the Oneida Nation.

407.3. Definitions

407.3-1. ~~(F)~~.

407.1-4. For the purposes of this ordinance law, the following definitions shall apply. All other words shall be defined according to dictionary reference.

(a) ~~APPROVED~~ “Approved” means accepted or ratified by the Environmental Health ~~Department~~ and Safety Division.

(b) ~~AS-BUILT PLAN~~ “As-Built Plan” means a final plan of any system as installed.

(c) ~~AVAILABILITY OF PUBLIC SEWERS~~ “Availability of Public Sewers” means when a public sewer line either passes in front of a lot line or comes within ~~200~~ two hundred feet ~~(200’)~~ of a lot line, availability of the public sewers for servicing buildings on the lot is established.

(d) ~~BEDROCK~~ “Bedrock” means the rocks that underlie soil materials or are at the earth’s surface. Bedrock is encountered when the weathered in-place consolidated material, ~~larger~~ than 2mm 2 mm in size, is greater than ~~fifty percent (50%)~~ by volume.

(e) ~~BUILDING~~ “Building” means -a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the

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housing, shelter, enclosure or support of any kind, which is intended for human habitation or occupancy. A mobile home is included in this definition. Each structure abutting another structure which does not have an ingress-egress doorway through the basement foundation walls, or structures with separate exterior or exterior abutting walls, or public use structures separated by an unpierced firewall, shall be considered as separate or individual building.

(f) ~~CESSPOOL~~ “Cesspool” means a covered excavation in the ground which receives sewage or other organic matter and solids, permitting the liquids to seep into the soil cavities. Cesspools are prohibited.

(g) ~~CLEANOUT~~ “Cleanout” means a plug or cover made of material approved by the Department, joined by means of a screw thread to an opening in a pipe, which can be removed for the purpose of cleaning or examining the interior of the pipe.

~~(h) CLEANWATER WASTES~~ (h) “Cleanwater Wastes” means cooling water and condensate drainage from refrigeration compressors and air-conditioning equipment, water used for impurities have been reduced below a minimum concentration considered harmful, and cooled condensate from steam heating systems or other equipment.

(i) ~~COLOR~~ “Color” means the moist color of the soil based on Munsell soil color charts.

(j) ~~COMMUNITY ON-SITE WASTE DISPOSAL SYSTEM~~ “Community On-Site Waste Disposal System” means an on-site waste disposal system servicing more than one (1) building being served. A community sewage system may be owned by the property owners, the ~~TribeNation~~, or special purpose district.

~~(k) CONVENTIONAL SOIL ABSORPTION SYSTEM~~ (k) “Conventional Soil Absorption System” means a system that employs gravity flow from the septic or other treatment tank and applies effluent to the soil through the use of a seepage trench, bed or pit.

(l) ~~DEPARTMENT~~ “Department” means the Oneida Tribal Environmental Health Department and Safety Division.

~~(m) DETAILED SOIL MAP A~~ (m) “Detailed Soil Map” means a map prepared by or for a state or federal agency participating in the national cooperative soil survey showing soil series, type and phases at a scale of not more than 2,000 feet to the inch and includes related explanatory information.

(n) ~~DOSING TANK~~ “Dosing Tank” means a tank used for the collection of sewage effluent from a septic or solids tank. The effluent is pumped from the dosing tank to a soil absorption field.

(o) ~~DWELLING UNIT~~ “Dwelling Unit” means one (1) or more rooms with provisions for living, sanitary and sleeping facilities which are used or intended to be used by one (1) person or by two (2) or more persons maintaining a common household.

(p) ~~EFFLUENT~~ “Effluent” means liquid discharge from a septic or other treatment tank.

(q) ~~EXISTING~~ “Existing” means prior to the adoption date of this ~~ordinance~~ law.

~~(r) EXPERIMENTAL SYSTEM~~ (r) “Experimental System” means an on-site wastewater treatment system designed to overcome site limitation which would preclude the installation of any of the standard soil absorption systems defined in this

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~~ordinance~~law. Not all sites are suitable for experimental systems.

(s) ~~FAILING PRIVATE SEWAGE SYSTEM~~ “Failing Private Sewage System”
means a failing private sewage system is one (1) which causes or results in any or the following conditions:

(1) ~~.)~~ The failure to accept sewage discharges resulting in the back up of sewage into the structure served by the private sewage system.

(2) ~~.)~~ The discharge of sewage to the surface of the group or to a drain tile.

(3) ~~.)~~ The discharge of sewage to any waters within the exterior boundaries or adjacent to the Oneida ~~Tribe of Indians of Wisconsin~~ Nation Reservation.

(4) The introduction of effluent into zones of saturation which adversely affects the operation of a private sewage system.

(5) ~~.)~~ The ponding of effluent within the soil absorption system.

(t) ~~GREASE INTERCEPTOR~~ (t) “Grease Interceptor” means a watertight tank which is installed underground for the collection and retention of grease from cooking of food processing and which is accessible for periodic removal of the contents.

(u) ~~HIGH GROUNDWATER ZONES~~ (u) “High Groundwater” means zones of soil saturation which include: Perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated. Unless otherwise proven, the presence of soil mottles indicates the level of seasonal saturation.

(v) ~~HOLDING TANK~~ “Holding Tank” means an approved watertight receptacle for the collection and holding of sewage, which requires pumping by a licensed sanitary hauler.

(w) ~~INDOOR PLUMBING~~ “Indoor Plumbing” means one (1) plumbing fixture constitutes an indoor plumbing system.

(x) ~~IN-GROUND PRESSURE DISTRIBUTION SYSTEM~~ (x) “In-Ground Pressure Distribution System” means a pressurized soil absorption system placed entirely within the natural soil and based on the mound system design.

(y) ~~LEGAL DESCRIPTION~~ (y) “Legal Description” means inaccurate Metes and Bounds description, a claim number, a lot and block number in a recorded subdivision, a recorded assessor’s plat or public land survey description to the nearest forty (40) acres in 1/4-1/4 sections (ie: NW 1/4 of the NE 1/4, Section 10, T24N-R18E).

(z) ~~MOBILE HOME~~ “Mobile Home” means a transportable structure mounted on a chassis and designed to be used with or without a permanent foundation as a dwelling as a dwelling unit. The phrase “without a permanent foundation” indicates that the support system is constructed with the intent that the mobile home thereon may be moved from time to time at the convenience of the owner.

(aa) ~~MODIFIED MOUND SYSTEM~~ (aa) “Modified Mound System” means a soil absorption system which utilized pressured distribution of the effluent and sandy fill materials to overcome sites with specific limiting conditions. The limiting conditions are:

(1) Depth to seasonal high groundwater of 24 to 54 inches with percolation rates of 0 to 180 minutes per inch.

(2) ~~.)~~ Depth to seasonal high groundwater of 12 to 54 inches with ~~percolatin~~ percolation rates of 0 to 120 minutes per inch.

(bb) ~~MOUND SYSTEM~~ “Mound System” means a system which utilized

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pressurized distribution of the effluent and sandy fill conditions are:

(1) Depth to fractured bedrock of ~~24 to 54~~ twenty-four inches ~~(24")~~ to fifty-four inches (54") with percolation rates of ~~zero (0)~~ to sixty (60) minutes per inch

(2) Depth to seasonal high groundwater levels of ~~24 to 54~~ twenty-four inches ~~(24")~~ to fifty-four inches (54") with percolation rates between ~~zero (0 to)~~ and one hundred twenty (120) minutes per inch.

(cc) ~~NUISANCE~~ "Nuisance" means -any source of filth, odor or probable cause of sickness, as is described in Wisconsin Statue 146.14

(dd) ~~ONEIDA TRIBE~~ "Oneida Tribe of Indians of Wisconsin is Nation" means Oneida Nation, a federally recognized Indian government and a Treaty Tribe recognized by laws of the United States.

(ee) ~~ON-SITE WASTE DISPOSAL SYSTEM~~ (ee) "On-Site Waste Disposal System" means a sewage treatment disposal system serving a single building with a septic tank and soil absorption field located on the same parcel as the building. This term also means an alternative substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) building, or a system located on a different parcel than the building, or a system located on a different parcel than the building. A private sewage system may be owned by the property owner or by a special purpose district.

(ff) ~~PERCOLATION TEST~~ "Percolation Test" means the method used for testing soil absorption qualities, as described in ILHR 83,09(5), Wisconsin Administrative Code. All soil Wisconsin-licensed Certified Soil Testers.

(gg) ~~PERMEABILITY~~ "Permeability" means the ease with which liquid move through the soil. One (1) of the soil qualities listed Certified Soil Testers.

(hh) ~~PLUMBER~~ "Plumber" means a person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer Services-, as described in Wisconsin State Statute 145.01

(ii) ~~PRESSURE DISTRIBUTION SYSTEM~~ (ii) "Pressure Distribution System" means a soil absorption system that employs a pump or automatic siphon and small diameter distribution pipping with small diameter perforations to introduce effluent into the soil. Plan review and departmental approval is required for each system of this type. Approval will only be given on a case by case basis. Approval shall only be given on an individual basis.

(jj) ~~PRIVY~~ "Privy" means a structure that is not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

(kk) ~~PRIVY PIT~~ "Privy-Pit" means a privy with earthen sidewalls and/or bottom. The privy shall be so constructed as to be insect and rodent proof as described in ILHR 53.63, Wisconsin Administrative Code

(ll) ~~PRIVY VAULT~~ "Privy-Vault" means a privy with watertight vault consisting of one (1) of the following:

(1) concrete sidewalls and bottom(poured in place)

(2) a prefabricated concrete tank

(3) an asphalt coated steel tank

(A) The tank shall be constructed insect and rodent proof per ILHR 52.63 Wisconsin administrative Code.

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(mm) ~~PUBLIC SEWERS~~ “Public Sewers” means a wastewater treatment system which utilizes collection of the sewage through underground sewer pipes, which all flow to one (1) collection station, where the wastewater is then treated. Public sewers provide service to more than one (1) residence, and each residence is charged a fee for wastewater collection and treatment.

(nn) ~~SEEPAGE BED~~ “Seepage Bed” means an excavated area larger than 5 five feet (5') in width which contains a bedding of aggregate and has more than one (1) distribution line.

(oo) ~~SEEPAGE PIT~~ “Seepage Pit” means an underground receptacle so constructed as to permit disposal of effluent or clear wastes by soil absorption through its flood and walls.

(pp) ~~SEPTIC TANK~~ “Septic Tank” means a tank which receives and partially treats sewage, through processes of sedimentation, oxygenation, flotation and bacterial action so as to separate solids from liquid in the sewage, and discharges and public buildings.

(qq) ~~SEWAGE~~ “Sewage” means the liquid and water carried wastes created in and conducted away from residences, industrial establishments and public buildings.

(rr) ~~SOIL~~ “Soil” means the unconsolidated material over bedrock.

(ss) ~~SOIL ABSORPTION~~ “Soil Absorption” means any sewage treatment system which has a solid separation tank and utilizes distribution of the sewage effluent to unsaturated soil for treatment. Systems included in this ~~definitions~~ definition are: conventional septic's, mounds, in-ground pressure distribution, at-grade, etc.

(tt) ~~SOIL BORING~~ “Soil Boring” means an observation pit dug by hand or backbone, a hole dug by auguring or a soil core taken intact and undisturbed with a probe.

(uu) ~~SOIL MOTTLES~~ “Soil Mottles” means spots or streaks of contrasting soil colors usually caused by soil saturation for some period of a normal year. Soil mottles are used as indicators of the seasonal high groundwater level.

(vv) ~~SOIL SATURATION~~ “Soil Saturation” means the state when all the pores in a soil are filled with water. Water will flow from saturated soil into a bore hole.

(ww) ~~TOPSOIL~~ “Topsoil” means the undisturbed surface horizon of a soil often characterized by a clack or dark grayish brown color due to a higher content of organic matter.

(xx) ~~TRIBAL VENDOR'S PERMIT~~ “Tribal Vendor's Permit” means a permit issued by the Environmental Health ~~Department~~ and Safety Division for the installation of a private sewage system.

(yy) ~~VENT CAP~~ “Vent Cap” means an approved appurtenance used for covering the vent terminal of a soil absorption system, to avoid closure by mischief or debris, and still permit circulation of air within the system.

(zz) ~~WORKMANSHIP~~ “Workmanship” means work of such character that will fully secure the results sought in all the sections of this ~~ordinance~~ law as intended for the safety, welfare and health protection of all individuals.

~~407.2-4.~~ **General ~~requirements~~ Requirements**

~~407.24-1.~~

(a) Every building or structure intended for human habitation or occupancy, within the

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scope of applicability of this ~~ordinance~~law, shall have a Tribally-approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved only if no public sewers are available to service said buildings. Unless specifically approved by the ~~Tribe~~Nation, the private sewage system to each building. A private sewage system may be owned by the property owner or by a special purpose district. The use of a community on-site waste disposal system or a system on a different parcel than the structure shall be subject to the same permit requirements and procedures as for systems serving public buildings. The private sewage system for newly constructed buildings shall be installed, inspected and approved before the building can be occupied.

(b) The type of on-site waste disposal system approved for use on a site shall be dependent upon site conditions. ~~Approvable~~Approvable types of on-site waste disposal systems are:

- (1) Conventional soil absorption systems
- (2) In ground pressure distribution systems
- (3) Mound systems
- (4) Modified mound systems
- (5) At-grade systems
- (6) Holding tanks
- (7) Privies (pit and vault)

~~Approvable~~Approvable systems are not limited to this list, but systems not included on this list may only be approved by the Environmental Health ~~Department~~and Safety Division on an individual basis.

(c) Additional restrictions

- (1) Domestic waste-all water carried wastes derived from ordinary living uses shall enter the septic or treatment tank or be discharged to a public or municipal treatment system.
- (2) Water supply-all new buildings intended for human habitation or occupancy shall be provided with a well and water supply system.
- (3) Cesspools-cesspools are prohibited.
- (4) Clear water-The discharge of surface, rain and other clear water into a private sewage system is prohibited.
- (5) Water shortener and iron filter backwash-Water softener or iron filter discharge may be directed to the private sewage system, a separate below ground surface soil absorption system or to the ground surface if a nuisance is not created.
- (6) Floodplain-On-site waste disposal systems for new buildings will not be approved for construction within the floodplain. Existing buildings may have a system approved in the flood fringe subject to Departmental approval on an individual basis. All systems shall be flood-proofed to a height of at least two ~~(2)~~(2') feet ~~(2')~~above the one hundred (100) year flood elevation.

(d) Holding Tanks

- (1) Holding tanks will not be approved to service any new residential construction. Holding tanks shall only be approved under the following circumstances:

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- (A) As a temporary method of waste containment until public sewers are available, not to exceed two (2) years from the date of installation. Extended use of the holding tanks beyond the two (2) year period will require a permit for the Environmental Health Department and Safety Division. The holding tanks shall be disconnected and a connection shall be made upon availability of the public sewer system, and the tanks properly abandoned in the manner as is described in ILHR 83, Wisconsin Administrative Code.
- (B) As a replacement system for existing filing soil absorption systems. Holding tanks shall be approved only if no other soil absorption system can be approved for the site.
- (C) As an interim measure when there are delays in funding from outside funding agencies. The site must have received written approval for an on-site soil absorption system, and funding must have been appropriated to cover all installation costs. The system must be completed as soon as the funding is made available.
- (D) As an interim measure for construction reason. If an approved soil absorption system is being constructed, and progress on construction is halted severe weather (ie, winter frost conditions), then holding tanks may be installed and used only until construction of the soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this ordinance law.
- (E) For an existing residence where no other soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this ordinance law.
- (F) For new construction of commercial buildings only where no other soil absorption system can be permitted.

(e) Privies

- (1) Privies are prohibited for all new residential construction.
- (2) Privies may be permitted only when the existing building served by the privy is not provided with an indoor plumbing system. One (1) plumbing fixture constituted indoor plumbing.
- (3) All privies must meet the site requirements as described in IRHR 83.10, Wisconsin Administrative Code.
- (4) When system upgrade becomes available or indoor plumbing is installed, then privy must be properly abandoned, and the building must be connected to an approved on-site waste disposal system or a public sewer system.
- (5) All chemical, gas electrical, composting and other non-water using toilets must comply with all requirements of privies.

(f) Public Sewer Connection

- (1) When public sewers become available to any buildings intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not to exceed one (1) year. The building sewer shall be disconnected from the private sewage systems

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and be connected to the public sewer.

(2) The owner shall be required to connect to public sewers sooner than the one (1) year date if the existing private sewage system meets the definition of a failing system.

(3) When funding for the connection is available, the owner shall be required to connect to the public sewer sooner than the one (1) year date. The connection shall be made according of the contractor's construction schedule.

(4) All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in the same manner as is designated in Chapter NR 113, Wisconsin Administrative Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(g) Failing systems

(1) When a failing or malfunctioning private sewage system is encountered, the sewage disposal system shall be corrected or its use discontinued within that period of time required by departmental order, with a maximum time limit of one (1) year. A failing system is identified when one (1) or more of the following conditions apply:

(A) The failure of the private sewage system to accept sewage discharges and or there is back-up of the sewage to the structure the system services.

(B) The discharge of sewage to the surface of the ground or to a drain tile.

(C) The discharge of sewage to any waters within the exterior boundaries or adjacent to the operation of private sewage system.

(D) The introduction of effluent into zones of saturation which adversely affects the operation of private sewage system.

(E) The ponding of effluent within the soil absorption system.

(h) Incorporation of provisions by reference

(1) This chapter incorporates by reference the following rules, regulations and laws, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code governing the location, construction and use of the private sewage systems.

(A) State Statutes: 59.065, 59.07(51), 144, 145, 146.13, 146.14, and 968.10

(B) Wisconsin Administrative Codes: NR 113; ILHR 82 and ILHR 83.

(2) These rules, regulations and laws shall be available upon request from the Environmental Health ~~Department~~ and Safety Division.

(3) These rules, regulations, and laws shall be used for purposes of this ~~ordinance~~ law only, and shall apply until amended or renumbered and then shall apply as amended or renumbered.

(4) References in these codes as to the responsibilities of the "State", "Department", "Department of Natural Resources", and "County" shall be directed to the "Oneida ~~Tribal~~ Nation" and to the "Oneida ~~Tribal~~ Environmental Health Department and Safety Division".

(i) Administration

(1) The Oneida Tribal Environmental Specialist shall be responsible for the administration of this ~~ordinance~~ law. The Environmental Specialist may delegate

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responsibilities to personnel employed by or assigned to assist the Environmental Specialist.

(j) Powers and Duties

(1) In administering this [ordinance law](#), the Environmental Specialist shall have the following powers and duties:

(A) Perform duties, and delegate duties as may be required, to personnel assigned to or employed to assist the Environmental Specialist, to assure full and complete compliance with this [ordinance law](#).

(B) Provide assistance to applicants preparing permit applications, and advise said applicants regarding provisions of this [ordinance law](#).

(C) Review and approve plans for private on-site sewage treatment systems.

(D) Issue permits and perform site inspections for compliance with this [ordinance law](#).

(E) Keep records of all permits issued, inspections made, work approved and other official actions.

(F) Report violations of this [ordinance law](#) or other land use regulations to the Tribal office designated by the Oneida Business Committee, as provided for in the Administrative Procedures Act.

(G) Have access to any premises for the purposes of performing said duties between 8:00 a.m. and 8:00 p.m. or at other times set by mutual agreement between the property owner or their agent and the Environmental Specialist. Application for permit is considered, for the purposes of this [ordinance law](#), as the owner's consent to enter the premises.

(H) Upon reasonable cause or question as to proper compliance, revoke any Tribal sanitary permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a building which is in violation of the provisions of this [ordinance law](#), until compliance with this [ordinance law](#) is obtained.

(I) Issue and enforce orders to plumbers, property owners, their agents or contractors of the responsible party, to assure proper owners, their agents or contractors of the responsible party, to assure proper compliance with all provisions of this [ordinance law](#). The Environmental Specialist may delegate this authority to the Tribal office designated by the Oneida Business committee, as provided for in the Administrative Procedures Act.

(2) Violations of this [ordinance law](#) which occur on leased land will be reported to the Oneida Land Office and the Oneida Land Office and the Oneida Law Office because said violations may constitute violations of the Tribal Land Lease.

(k) Repeal and effective date

(1) Tribal sanitary permits are obtained through the Oneida Environmental Health [Department and Safety Division](#). Completed application shall be submitted for review to the Oneida tribal environmental Specialist. The permit shall be reviewed and processed with two (2) weeks of receiving the completed application package, except in the case of modified mound an experimental systems which may take

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longer to review.

(2) Every on-site waste disposal system installed, expanded, modified, or enlarged after the adoption date of this ~~ordinance~~law shall require a Tribal Sanitary Permit.

(3) When a change of ownership occurs, the owner of system shall have the system inspected by a State of Wisconsin Licensed Plumber, Registered Sanitarian or other person accepted by the Environmental Health ~~Department~~and Safety Division.

(4) A Tribal sanitary permit shall be obtained by the property owner, his/her agent or contractor, in the name of the property owner, prior to the construction of any building which requires a private sewage system. Any property owner, his/her agent or contractor, who starts construction on a building, prior to obtaining a Tribal sanitary permit, is in violations and ~~may~~may be subject to the penalties provided in this ~~ordinance~~law.

(5) Before any private sewage system may be installed, enlarged, altered, modified or additions constructed, a Tribal sanitary permit must first be obtained by the property owner, his/her agent or contractor. Failure to comply with this requirement constitutes a violation of this ~~ordinance~~law. Violations which occur on leased land may also constitute violations of the Tribal land lease.

(6) A Tribal sanitary permit shall be obtained prior to constructing or erecting a privy.

(7) If any part of a system has failed, the entire system shall be evaluated for compliance with existing codes.

~~407.3-5.~~ **Permits and Applications:**

~~407.35-1.~~

(a) ~~Permit Codes~~

(1) The permit card issued by the Environmental Specialist to the property owner or his/her agent shall serve as the Tribal sanitary permit.

(2) The permit card shall be displayed at the site in such a manner that it will be visible from a road abutting the lot during all construction phases.

(3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Environmental Specialist or a Tribally-authorized inspector.

(4) Failure to display the permit card shall be considered a violation of this section and may subject the property owner, his/her agent or contractor, to penalty provisions of this ~~ordinance~~law.

(b) Application Requirements

(1) The Tribal sanitary permit application shall include the following information which shall be furnished by the applicant on forms provided by the Tribal Environmental Health ~~Department~~and Safety Division, along with all applicable fees:

(A) Names and address of the applicant (owner of the site) and the plumber employed (when applicable).

(B) Legal description of the subject site by claim number, lot block and

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recorded subdivision or by metes and bounds. All legal descriptions must also include a plot 1/4-1/4 section description to the nearest ~~forty~~ (40) acres (~~ie i.e.~~: NW 1/4 of the SE 1/4, Section 12, T23N-R19E).

(C) All lot dimensions.

(D) Driving directions to the site

(E) Building use (single, family, duplex, multi-family, commercial, industrial, and Tribal roll number).

(F) Plot plan. Detailed plot plan dimensions are drawn to scale showing the lot size; the location of all septic tanks; holding tanks or other treatment tanks; building sewers–sanitary and storm; wells; water mains or water service; streams and lakes; dosing or pumping chambers; distribution boxes; effluent systems; dual disposal systems; replacement system areas; and the location of the building served. Adjoining properties shall be checked to insure that the site location distances and dimensions shall be shown on the detailed plot plan.

(G) Reference points. A vertical elevation reference point and a horizontal reference point.

(H) Soil boring and percolation test data related to the undisturbed and finished grade elevations, vertical elevation reference point and horizontal reference point. Surface elevations, vertical elevation reference point and horizontal point. Surface elevations shall ~~ve be~~ given for all soil borings. All soil borings and percolation tests shall be performed by a State of Wisconsin Certified Soil Tester.

(I) Occupancy. The maximum number of bedrooms in the ~~residee~~~~residence~~ shall be indicated. The number of employees(full time and part time on an 8-hour shift), estimated number of customers in an 8-hour shift, number of washing machines and disposition of commercial/retail buildings.

(J) Other specifications. Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe frictionless, pump performance curve, pump model manufacturer, and all piping information.

(K) Any other information deemed necessary by the Environmental Health ~~Department~~~~and Safety Division~~.

(2) Pit privy permit applications shall be accompanied by soil data provided by a State of Wisconsin-~~licence Certified~~~~license certified~~ tester to a depth of ~~3~~~~three~~ feet ~~(3')~~ below the proposed pit bottom. Soil data is not required when making

application for a vault privy. The property owner shall be furnished with a copy of the Tribal privy construction requirements when the permit for a privy is issued.

(3) The Tribal Environmental Health ~~Department~~~~and Safety Division~~ reserves the right to refuse incomplete or incorrect permit applications or to delay issuance until corrected or completed applications are received.

(c) Permit Expiration

(1) Sanitary permits for private sewage systems, which have not been installed,

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shall expire two (2) years after the date of issuance. Permits may be renewed following written application to the Environmental Health Department and Safety Division by the proper owner, his/her agent or contractor, prior to the expiration date of the original permit.

(2) There shall be a fee for the renewal of a permit.

(3) The renewal shall be based on Oneida Sanitary Ordinance requirements in effect to the time of renewal.

(4) Changed ~~ordinance~~ requirements may impede the renewal.

(5) The property owner, his/her agent, or contractor, shall return the original permit card and receive a new card when the permit is renewed.

(6) All permits issued prior to the effective date of this ~~ordinance~~ law shall expire two (2) years from issue date unless renewed.

(7) If a permit has expired and the owner wants to build on the site, a new sanitary permit must be obtained, and the site shall be subject to the currently existing ~~ordinance~~ requirements, including any revisions made during the elapsed time period.

(d) Permit Replacement/Transfer

(1) If a sanitary permit is lost or destroyed, a replacement permit may be obtained from the Environmental Health Department and Safety Division. The land owner shall submit a written request, along with the permit replacement fee, to the Environmental Health Department and Safety Division, and a new sanitary permit shall be issued prior to installation of the system shall be subject to the following:

(A) The new property owner shall submit a written request to the Environmental Health Department and Safety Division to transfer the permit.

(B) The sanitary permit card shall be returned to the Department so that a new permit card may be issued.

(C) Transfer of ownership shall not affect the expiration date or renewal requirements. Any changes other than transfer of ownership shall require a new permit.

(D) The new property owner shall submit the permit transfer fee to the Environmental Health Department and Safety Division.

(e) Building alteration permits

(1) A tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly regarding the condition of the system shall be provided.

(B) The systems will be capable of handling the proposed wastewater load from the building to be served.

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C) The system will meet all minimum setback requirements of ILHR 83.

(3) Soil boring data to a depth of ~~3~~three feet (~~3'~~) below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building serviced by existing holding tanks will require an updated Holding ~~tank~~Tank Agreement, one (1) which meets ~~there~~the requirements of this ~~ordinance~~law. A copy ~~or~~of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to ~~insure~~ensure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida ~~Land Office~~Nation ~~Register of Deeds~~ and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health ~~Department~~and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(f) Change of plumbers

(1) A Tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from the that building or where the building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly, pursuant to this ~~ordinance~~law. A State of Wisconsin Licensed Plumber's statement regarding the condition of the system shall be provided.

(B) The system will be capable of handling the proposed wastewater load from the building to be served.

(C) The systems will be capable of handling the proposed wastewater load from the building to be served.

(3) Soil boring data to a depth of ~~3~~three feet (~~3'~~) below the bottom of the ~~exiting~~existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building received by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets their requirements of this ~~ordinance~~law. A copy ~~or~~of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system

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and/or building alteration to insure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed ~~on-ly~~only if an affidavit for the use of the undersized system is recorded in the Oneida ~~Land Office~~Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health ~~department~~and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(g) Change of Plumbers

(1) When an owner wishes to change plumbers, the owner must complete a Tribal Change of Plumbers Form, signed by the new plumber. The form must be submitted to the Environmental Health ~~Department~~and Safety Division, along with the applicable fees.

(2) The change of plumbers shall take place prior to the installation of the private sewage system.

(h) Modified Mound and Experimental System Permits

(1) Sanitary permits of modified mounds and experimental systems shall only be approved for existing buildings. Not all sites are suitable for modified mounds and experimental systems.

(2) Sanitary permits for modified mounds and experimental systems shall be approved by the Environmental Health ~~Department~~and Safety Division only on an individual basis.

(3) Modified mounds and experimental system sanitary permit applications are subject to all requirements of a regular sanitary permit, in addition to any additional requirements deemed necessary by the Environmental Health ~~Department~~and Safety Division. Additional information may include, but is not limited to: more frequent inspections, additional soil borings, groundwater monitoring or contour maps.

(i) Site Evaluation

(1) A site evaluation may be necessary to determine the suitability of a lot for a private sewage system. Site evaluations will be made at the discretion of the Environmental Specialist. The evaluation shall take place within ~~ten~~(10) working days of becoming aware of question of suitability and will be made prior to the issuance of the sanitary permit. The site evaluation will result in one ~~(1)~~(1) of the following:

(A) Issuance of the permit, provided all information on the application is correct and complete.

(B) Holding the application pending clarification of information or new information by the owner, the plumber or the certified Soil Tester.

(C) Denial of the permit if the site does not meet all the provisions of this ~~ordinance~~law.

(2) Soil test pits shall be constructed which allow adequate visual observations of the soil provide in place. This is best accomplished by the construction of backhoe

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pits. The test pits shall be left in such a manner that will permit access to them for the evaluation of the soil protection were provided. Bore holes shall be either fenced or closed within five (5) days of the date of inspection.

(3) Site evaluations shall be done prior to issuance of permits for a mound system.

(j) Permit Denial

(1) When an on-site evaluation of a proposed private sewage system or pit privy reveals that the site is compliance with the requirements of this ~~ordinance~~law, the permit application shall be ~~denied~~approved. Written justification of the denial must be supplied to the owner of the Environmental Health ~~Department~~and Safety Division within five (5) working days of the decision.

(k) Holding Tank Agreements

(1) Prior to the issuance of a sanitary permit for the installation of a holding tank, the owner of the holding tank, or his/her agent, shall sign and register a Holding Tank Agreement with the Oneida ~~tribe~~Nation or a State of Wisconsin Licensed Plumber. The purpose of the agreement is to ensure that the holding tank wastewater will be properly disposed of.

(2) Holding tank owner shall sign a servicing Contract with the Oneida Utilities for sewage disposal and must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing contract with the Oneida Utilities for regularly scheduled servicing of the holding tank by the Tribally-licensed septic tank pumper. Copies of the servicing contract shall be attached to the holding tank agreement.

(B) The holding tanks shall be chained and locked at all times, and the chain, lock and lock keys shall be the property of the Oneida Utilities, to prevent unauthorized removal of the holding tank wastewater.

(C) The Oneida Utilities shall keep a log of the holding tank servicing dates, owner's names and servicing locations, gallons serviced, and disposal locations for all owner's names and servicing locations, gallons serviced, and disposal locations for all holding tanks on registered Servicing Contracts. This log shall be sent to the Environmental Health ~~Department~~and Safety Division by the 15th of every month, for the previous month's activities.

(3) Holding tanks owners who contract with a Non-tribal Septic Tank Pumping Service must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing Contract with the Non-tribal Septic Tank Pumping Service for regularly scheduled servicing of the holding tanks copies of the Servicing contract shall be attached to the Holding Tank Agreement.

(B) The holding tanks shall be chained and locked at all times.

(C) All Non-Tribal Septic Tank Pumping Services must meet the following requirements:

(i) The Septic Tank Pumper must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

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(ii) The Septic Tank Pumper must follow all of the Nation's disposal requirements ~~of the tribal ordinances~~.

(D) The Non-tribal Septic Tank Plumber shall keep a log of the holding servicing dates, owners names, and servicing locations, gallons serviced, and disposal locations of all holding tanks on registered servicing contacts. This log shall be sent to the Environmental Health Department and Safety Division by the 15th of every month, for the previous month's activities.

(4) The signed Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.

~~(5) The Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.~~

~~(6)~~ (5) Removal of the holding tank wastewater by persons other than those employed by the Oneida Utilities, or those State of Wisconsin-licensed Septic Tank Plumbers approved by the Environmental Health Department and Safety Division, shall constitute a violation of this ordinance law. Such violations which occur on Tribally-leased land shall constitute a violation of the Tribal land lease.

(I) Maintenance Program

(1) All soil absorption system tanks shall be pumped by a Tribally-licensed or State of Wisconsin-licensed septic tank pumper within two (2) years of the date of installation and at least once every two (2) years thereafter, unless upon inspection the tank is found to have less than one third (1/3) of the volume occupied by sludge and scum.

(2) All private sewage systems installed after the date of adoption of this ordinance law shall be inspected once every two (2) years for system compliance and tank integrity. Additional inspections, or inspections of systems installed prior to the date of ordinance law adoption, may be performed upon request by the system owner.

(3) Inspection of a private sewage shall be conducted by a Registered Sanitarian, the Tribal Environmental Specialist, a Master Plumber, a Journeyman Plumber or a Registered Plumber licensed by the State. Inspections may also be performed by training program and have received authorization from the Tribe Nation. Re-certification of the authorized tribal employees shall be required on a yearly basis, and shall be provided by the Environmental Health Department and Safety Division. The inspections shall be performed at the same time as the tank pumping.

(4) The owner of said soil absorption system shall submit information as to the condition of the system and tank, and the date of pumping, to the Tribal Environmental Health Department and Safety Division within ten (10) days of the date of inspection of the tank is made by an authorized Tribal employee.

~~(5) of the tank is made by an authorized Tribal employee.~~

~~(6)~~ (5) The owner of a holding tank shall sign and register a Holding Tank Agreement, as specified in Section section 407.35-1(i) of this ordinance law, and shall be subject to all requirements stated in Section section 407.24-1(d)(1).

~~(7)~~ (6) Non-tribal Septic Tank Pumpers who are approved by the Environmental Health Department and Safety Division to service on-site waste disposal systems

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must comply with the following requirements:

(A) The Septic Tank Pumpers must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(B) The Septic Tank Pumper must obtain a Tribal Vendor's Permit prior to servicing any tanks.

(C) The Septic Tank Pumper must follow all of the Nation's disposal and reporting requirements ~~of the Tribal ordinances~~.

(m) Permit ~~Fees~~ fees shall be set and periodically amended by the Oneida Business Committee. Fees may be reduced by fifty percent (50-%%) if the inspections are performed by Indian Health Service agents. All fees must accompany permit application. Fees are payable by check to the "Oneida ~~Tribe of Indians of Wisconsin~~ Nation". No out-of-state checks will be accepted. Failure to pay permit fees constitutes a violation of this ordinance ~~law~~. Applicable fees are as follows:

(1) Private Residential Building Sanitary Permit:

(A) Conventional soil absorption systems:	\$20.00
(B) In-ground pressure distribution system:	\$20.00
(C) Holding tanks:	\$20.00
(D) Mound systems, modified mound systems, at grade systems and experimental systems:	\$50.00

(2) Public and Commercial Building Sanitary Permits:

(A) Conventional soil absorption systems:	\$45.00
(B) In-ground pressure distribution systems:	\$45.00
(C) Holding tanks:	\$90.00
(D) Mound systems, modified mound systems, at grade systems and experimental systems:	\$150.00

(3) Other Fees:

(A) Sanitary renewal:	\$5.00
(B) Change of Plumber fee:	\$5.00
(C) Privy permits:	\$5.00
(D) Building alteration permit fees:	
Private Residential building	\$20.00
Public and Commercial buildings	\$45.00

407.46-1. Inspections

407.46-1. General

(a) All private sewage shall be inspected after construction ~~by and~~ before ~~back-~~ filing backfilling. The inspections shall be performed within the following work day excluding Saturdays, Sundays, and holidays after receiving notice from the licensed plumber responsible for the installation.

(b) A Tribal Site Inspection form shall be completed by the Environmental specialist ~~of~~ for Tribal inspector. A copy of the report shall be sent to the system owner.

407.46-2. Notice for inspection

(a) The plumber employed to install the system shall notify the Environmental Specialist

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in person, by telephone or in writing when the on-site waste disposal system is ready for inspection.

(b) The owner shall be notified of regular inspections within twenty-four (24) hours of the inspection. If the owner ~~can not~~cannot be reached within the twenty-four (24) hour period, the inspection shall continue as scheduled. No prior notification shall be required for compliance inspections for holding tanks.

407.46-3. Preparation for inspection

(a) When an on-site waste disposal system is ready for inspection, the plumber employed to install the system shall make such arrangements as will enable the Environmental Health ~~Department~~and Safety Division inspector to inspect all parts of the system.

(b) The plumber shall have present the proper apparatus and equipment for conducting the inspection and shall furnish such assistance as may be necessary in making a proper inspection.

407.6-4-4. Holding Tank Inspections

(a) All site constructed holding tanks shall be inspected after the forms have been set and reinforcing is in place; but before any concrete has been poured. Concrete may be poured only after it has been determined that the tank, as formed, complies with the plans as approved by the Department.

(b) This inspection shall not eliminate the need for an inspection after the installation has been completed.

407.46-5. Privy Inspections

(a) All privies installed shall be inspected for compliance with this ~~ordinance~~law. The home owner or his agent shall notify the Environmental Health ~~Department~~and Safety Division for inspection immediately after the privy has been constructed.

(b) Privies may be inspected periodically after the initial inspection.

407.4-5-6-6. Mound Inspections

(a) All mound systems shall be inspected during construction by an inspector certified by the ~~tribe~~Nation. The plumber installing the mound shall notify the Environmental Specialist twenty-four (24) hours in advance of the installation. Four (4) inspections of the system shall be made during the first year of the mound operation in accordance with Tribal guidelines. Annual inspections may be made after the first year of operation, and may be more frequent if deemed necessary by the Environmental Specialist.

407.4-6-7. Re-inspections

(a) The Environmental Specialist may require additional inspections other than the inspection prior to backfilling, or if the initial inspection disclosed that the installation was incomplete at the time the installer indicated it would be complete, or if the system was not in conformance with the requirements stated in this ~~ordinance~~law.

407.4-7-6-8. As-built ~~plans~~Plans

(a) All on-site waste disposal systems installed, enlarged, modified, or expanded after the adoption date of this ~~ordinance~~law shall require as-built plans to be registered with the Environmental Health ~~Department~~and Safety Division.

(b) The plumber employed to install the system shall submit the as-built plans to the Environmental Health ~~Department~~and Safety Division within five (5) days of the installation of the system.

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(c) The as-built plans shall include all dimensions described in Section 407.35-1(b)(1)(F), of this ~~ordinance~~ law. It shall also include the location of all manhole risers installed as part of the system for which the as-built is being developed. The manhole covers and other portions of the system shall be located from two (2) permanent points (~~ie, i.e.,~~ corners of the building served).

407.4-8-6-9. Covering of Work

(a) No part of the private sewage system may be backfilled until it has been inspected and approved. If any part is covered before being inspected and approved it shall be uncovered at the discretion of the Environmental Health ~~Department~~ and Safety Division inspector or Indian Health Service Inspector.

407.4-9-6-10. Defects in materials Materials and workmanship Workmanship

(a) If inspection discloses defective material, design, siting or unworkmanlike construction which does not conform to the requirements of this ~~ordinance~~ law, the ~~unconforming~~ nonconforming parts shall be removed, replaced and ~~reinspected~~ re-inspected.

407.5-7. Administration and Enforcement

~~407.5-7-1 Administrative Procedures Act. Administrative procedures, including fines, penalties and appeal procedures are established by the~~

407.5-2 Variances

(a) A request for a variance to the conditions or requirements of this ~~ordinance~~ law may be made to the Environmental Specialist. The Environmental Specialist shall not have the authority to approve any variance request. ~~A variance request shall constitute a contested case. Procedural requirements for contested cases shall be followed~~ The Environmental Resource Board shall issue written approval or denial of any variances requested.

~~(b) The hearing body, as designated by the Administrative Procedures Act, shall hear the facts of the case and may either approve, deny, or request additional information, by in any case must act upon the variance request within the time frame set by the Administrative Procedure Act. Considerations relating to effect on public health, and tribal goals may be considered during the variance hearing.~~

407.5-3 (b) Parties disagreeing with the determination of the Environmental Resource Board may contest the decision by filing a complaint to the Judiciary in accordance with section 407.7-5.

407.7-2. Violations

(a) Any person who violates any provision of this ~~ordinance~~ law is subject to penalties and forfeitures provided for by this ~~ordinance and the Administrative Procedure Act~~ law and any resultant rules. Actions which constitute a violation are described in, but not limited to, the following:

(1) Installing a new on-site waste disposal system without first obtaining a Tribal Sanitary Permit.

(2) Modifying, altering, enlarging or constructing additions to an existing on-site waste disposal system without first obtaining a Tribal Sanitary Permit or a Building Alteration Permit.

(3) Servicing or removing sewage from an on-site waste disposal system tank without a valid State of Wisconsin or Tribal license.

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- (4) Failing to obey any requirement of an Administrative Enforcement Order.
- (5) Failing to properly display the Sanitary Permit card.
- (6) Failing to disconnect a failing private on-site waste disposal system within the Order. Building served by disconnected failing on-site systems shall be reconnected to public sewer systems.
- (7) Failing to connect a building served by a private on-site waste disposal system to a public sewer system within the time allotted by ~~Section~~section 407-24.1(f) of this ~~ordinance~~law, or the date stated in the Order.
- (8) Installing, modifying, altering, enlarging or making additions to any part of an on-site waste disposal system without a valid State Plumbing License. Privies are exempt from this requirement.
- (9) Failing to pay Tribal permit fees
- (10) Failure to correct a failing on-site waste disposal system within three (3) months of an Administrative Order. A failing on-site waste disposal system constitutes a threat to public health.
- (11) Failure to maintain a system through regularly scheduled pumping, pursuant to holding tank agreement and maintenance program of this ~~ordinance~~law. Failing to maintain a holding tank through regularly scheduled pumping constitutes a threat to public health.

~~(b) Any violation that results in a contested case shall comply with the procedures designated in the Administrative Procedures Act.~~

~~407.5-4-3.~~ Administrative Orders

- (a) The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this ~~ordinance~~law occurs, to provide the owner or agent the opportunity to bring their action into compliance with the provisions of this ~~ordinance~~law.
- (b) The Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the ~~rights~~right to ~~file a~~ contested ~~case~~the matter with the Oneida Judiciary.

~~407.5-5-7-4.~~ Penalties

- (a) ~~All~~The Environmental Resource Board is hereby granted administrative rulemaking authority to establish penalties ~~will be determined by the Tribal entity charged with enforcement for violations of tribal requirements for fines, penalties and appeals, this law.~~ Except as provided ~~by the Administrative Procedures Act. Forfeitures in section 407.5-5(b), forfeitures~~ for violations shall amount to not less than ~~\$ten dollars (\$10.00)~~ and not greater than ~~\$fifty dollars (\$50.00)~~ per violation. Each day such violation continues constitutes a separate offense.
- (b) Forfeitures for violations which constitute a threat to public health shall not be less than ~~\$fifty dollars (\$50.00)~~ and not more than ~~\$two hundred dollars (\$200.00)~~ per violation. Each day such violation continues constitutes a separate offense.

~~407.5-6~~ Appeals

- ~~(a) Appeals shall be pursuant to the Administrative Procedures Act~~

~~407.5-7~~ Severability

- ~~(a) Should a provision of this ordinance or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions.~~
- ~~(b) Repeal. All other Oneida Tribal laws, rules or regulations which are consistent with-~~

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~~this ordinance and are held subject to this ordinance are hereby repealed, but such shall not affect pending proceedings.~~

~~(c) Effective Date. This ordinance shall take effect 10 days after the date of formal approval by the Oneida Business Committee.~~

407.7-5. Appeal Permit Decision. Any person wishing to contest a decision of the Department related to a permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

407.7-6. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

407.7-7. Severability

(d) Conflict with Federal Law. Should any part of this ordinance be found to be in conflict with federal requirements which are required in order that the Oneida Tribe/Nation receive federal funds, the conflicting section of this ordinance/law is to be considered inoperative only for purposes of that particular funding and that inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this ordinance/law in its application to those agencies or departments directly affected.

~~(e) Compliance with Ordinance. Nothing in this ordinance shall be held to diminish constitutional right of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. All requirements or privileges relating to evidence or procedures shall apply equally to agencies and persons. Every agency or commission is granted authority to comply with the requirements of this ordinance. Subsequent tribal law shall not supersede or modify this ordinance or its applicability to any agency unless it is done so expressly by tribal law.~~

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961 407.57-8 Amendments

962 (a) ~~Any interested person may petition an agency and request that said agency propose~~
963 ~~that the Oneida business committee adopt, amend, or repeal this ordinance. Should this~~
964 ~~occur, the following shall apply. In addition to the following, the requirements of the~~
965 ~~Tribal Administrative Procedures Act shall apply:~~

966 (1) ~~Within sixty (60) days thereafter, the agency shall either deny the petition in~~
967 ~~writing, (stating reason for denial) or initiate ordinance/rule making proceedings in~~
968 ~~accordance with the Administrative Procedures Act.~~

969 407.59-9 Waiver of liability

970 (a) This ~~ordinance~~law shall not create a liability on the part of or a cause of action against
971 the ~~Tribe~~Nation, or any employee thereof, for any private on-site sewage treatment system
972 which may not function as designed. There shall be no liability of warranty for any site
973 which is approved or denied. The issuance of a sanitary permit and the formal inspection
974 of such a system does not warrant the system's function, nor is there a guarantee that the
975 system is free of defects or that all aspects of the system comply with the requirements or
976 this ordinance.

977
978
979 Adopted - BC-10-28-88-A

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Title 4. Environment and Natural Resources - Chapter 407**ON-SITE WASTE DISPOSAL****Tsi' Yeyakotyetáhkwa Olihwa'ke*****The matters concerning where the garbage is kept***

407.1.	Introduction	407.5.	Permits and Applications
407.2.	Adoption, Amendment and Repeal	407.6.	Inspections
407.3.	Definitions	407.7.	Administration and Enforcement
407.4.	General Requirements		

407.1. Introduction

401.1-1. *Applicability.* This law shall apply to all Oneida Tribal Entities, the Oneida Nation itself, and members of the Oneida Nation within the exterior boundaries of the Oneida Nation Reservation.

407.1-2. *Purpose.* The purpose of this law is to establish regulations to ensure that private on-site sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety. The regulations herein will set forth procedures for administration of the program; general requirements for proper siting, design, installation, inspection, and maintenance of the systems; limitations of private systems; and enforcement mechanisms and procedures. The ultimate intent of this law is to support the Oneida belief of taking care of Mother Earth. As unforeseen events may arise which are not specifically addressed in this law, this stated intent, along with the following basic principles, should define a course of action for unforeseen events.

(a) NEED-Every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste.

(b) PUBLIC SEWERS-When public sewers become available to any building intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not exceed one (1) year. The owner shall be required to connect to public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection is available, the owner shall be required to connect sooner than the one (1) year date, and the connection shall be made from the private sewage system and be connected to the public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection sooner than the one (1) year date, and the connection shall be made according to the contractor's construction schedule. The building sewer shall be disconnected from the private sewage system and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with chapter NR 113, Wisconsin Administrative Code. The top or the entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(c) DISCHARGES/FAILING SYSTEMS-Every private sewage system shall be designed, located and constructed to prevent ponding of effluent within the soil absorption system or an y discharge or sewage into drain tiles, onto the ground surface, into the structure served, or into the surface waters or groundwater within the exterior

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boundaries or adjacent to the Oneida Nation Reservation including zones of seasonal soil saturation.

(d) MAINTENANCE-Every private sewage system shall be adequately maintained.

(e) NUISANCE-Every private sewage system shall be designed and constructed to adequately dispose of all the wastewater generated in the structure or facility it is serving.

407.2. Adoption, Amendment and Repeal

407.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-10-28-88-A and amended by resolution _____.

407.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

407.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

407.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

407.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

407.3. Definitions

407.3-1. For the purposes of this law, the following definitions shall apply. All other words shall be defined according to dictionary reference.

(a) “Approved” means accepted or ratified by the Environmental Health and Safety Division.

(b) “As-Built Plan” means a final plan of any system as installed.

(c) “Availability of Public Sewers” means when a public sewer line either passes in front of a lot line or comes within two hundred feet (200’) of a lot line, availability of the public sewers for servicing buildings on the lot is established.

(d) “Bedrock” means the rocks that underlie soil materials or are at the earth’s surface. Bedrock is encountered when the weathered in-place consolidated material, larger than 2 mm in size, is greater than fifty percent (50%) by volume.

(e) “Building” means -a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the housing, shelter, enclosure or support of any kind, which is intended for human habitation or occupancy. A mobile home is included in this definition. Each structure abutting another structure which does not have an ingress-egress doorway through the basement foundation walls, or structures with separate exterior or exterior abutting walls, or public use structures separated by an unpierced firewall, shall be considered as separate or individual building.

(f) “Cesspool” means a covered excavation in the ground which receives sewage or other organic matter and solids, permitting the liquids to seep into the soil cavities.

Cesspools are prohibited.

(g) “Cleanout”- means a plug or cover made of material approved by the Department, joined by means of a screw thread to an opening in a pipe, which can be removed for the purpose of cleaning or examining the interior of the pipe.

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- (h) “Cleanwater Wastes” means cooling water and condensate drainage from refrigeration compressors and air-conditioning equipment, water used for impurities have been reduced below a minimum concentration considered harmful, and cooled condensate from steam heating systems or other equipment.
- (i) “Color” means the moist color of the soil based on Munsell soil color charts.
- (j) “Community On-Site Waste Disposal System” means an on-site waste disposal system servicing more than one (1) building being served. A community sewage system may be owned by the property owners, the Nation, or special purpose district.
- (k) “Conventional Soil Absorption System” means a system that employs gravity flow from the septic or other treatment tank and applies effluent to the soil through the use of a seepage trench, bed or pit.
- (l) “Department” means the Oneida Tribal Environmental Health and Safety Division.
- (m) “Detailed Soil Map” means a map prepared by or for a state or federal agency participating in the national cooperative soil survey showing soil series, type and phases at a scale of not more than 2,000 feet to the inch and includes related explanatory information.
- (n) “Dosing Tank” means a tank used for the collection of sewage effluent from a septic or solids tank. The effluent is pumped from the dosing tank to a soil absorption field.
- (o) “Dwelling Unit” means one (1) or more rooms with provisions for living, sanitary and sleeping facilities which are used or intended to be used by one (1) person or by two (2) or more persons maintaining a common household.
- (p) “Effluent” means liquid discharge from a septic or other treatment tank.
- (q) “Existing” means prior to the adoption date of this law.
- (r) “Experimental System” means an on-site wastewater treatment system designed to overcome site limitation which would preclude the installation of any of the standard soil absorption systems defined in this law. Not all sites are suitable for experimental systems.
- (s) “Failing Private Sewage System” means a failing private sewage system is one (1) which causes or results in any or the following conditions:
- (1) The failure to accept sewage discharges resulting in the back up of sewage into the structure served by the private sewage system.
 - (2) The discharge of sewage to the surface of the group or to a drain tile.
 - (3) The discharge of sewage to any waters within the exterior boundaries or adjacent to the Oneida Nation Reservation.
 - (4) The introduction of effluent into zones of saturation which adversely affects the operation of a private sewage system.
 - (5) The ponding of effluent within the soil absorption system.
- (t) “Grease Interceptor” means a watertight tank which is installed underground for the collection and retention of grease from cooking of food processing and which is accessible for periodic removal of the contents.
- (u) “High Groundwater” means zones of soil saturation which include: Perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated. Unless otherwise proven, the presence of soil mottles indicates the level of seasonal saturation.
- (v) “Holding Tank” means an approved watertight receptacle for the collection and

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holding of sewage, which requires pumping by a licensed sanitary hauler.

(w) “Indoor Plumbing” means one (1) plumbing fixture constitutes an indoor plumbing system.

(x) “In-Ground Pressure Distribution System” means a pressurized soil absorption system placed entirely within the natural soil and based on the mound system design.

(y) “Legal Description” means inaccurate Metes and Bounds description, a claim number, a lot and block number in a recorded subdivision, a recorded assessor’s plat or public land survey description to the nearest forty (40) acres in 1/4-1/4 sections (ie: NW 1/4 of the NE 1/4, Section 10, T24N-R18E).

(z) “Mobile Home” means a transportable structure mounted on a chassis and designed to be used with or without a permanent foundation as a dwelling as a dwelling unit. The phrase “without a permanent foundation” indicates that the support system is constructed with the intent that the mobile home thereon may be moved from time to time at the convenience of the owner.

(aa) “Modified Mound System” means a soil absorption system which utilized pressured distribution of the effluent and sandy fill materials to overcome sites with specific limiting conditions. The limiting conditions are:

(1) Depth to seasonal high groundwater of 24 to 54 inches with percolation rates of 0 to 180 minutes per inch.

(2) Depth to seasonal high groundwater of 12 to 54 inches with percolation rates of 0 to 120 minutes per inch.

(bb) “Mound System” means a system which utilized pressurized distribution of the effluent and sandy fill conditions are:

(1) Depth to fractured bedrock of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates of zero (0) to sixty (60) minutes per inch

(2) Depth to seasonal high groundwater levels of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates between zero (0) and one hundred twenty (120) minutes per inch.

(cc) “Nuisance” means -any source of filth, odor or probable cause of sickness, as is described in Wisconsin Statue 146.14

(dd) “Oneida Nation” means Oneida Nation, a federally recognized Indian government and a Treaty Tribe recognized by laws of the United States.

(ee) “On-Site Waste Disposal System” means a sewage treatment disposal system serving a single building with a septic tank and soil absorption field located on the same parcel as the building. This term also means an alternative substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) building, or a system located on a different parcel than the building, or a system located on a different parcel than the building. A private sewage system may be owned by the property owner or by a special purpose district.

(ff) “Percolation Test” means the method used for testing soil absorption qualities, as described in ILHR 83,09(5), Wisconsin Administrative Code. All soil Wisconsin-licensed Certified Soil Testers.

(gg) “Permeability” means the ease with which liquid move through the soil. One (1) of the soil qualities listed Certified Soil Testers.

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(hh) “Plumber” means a person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer Services, as described in Wisconsin State Statute 145.01

(ii) “Pressure Distribution System” means a soil absorption system that employs a pump or automatic siphon and small diameter distribution piping with small diameter perforations to introduce effluent into the soil. Plan review and departmental approval is required for each system of this type. Approval will only be given on a case by case basis. Approval shall only be given on an individual basis.

(jj) “Privy” means a structure that is not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

(kk) “Privy-Pit” means a privy with earthen sidewalls and/or bottom. The privy shall be so constructed as to be insect and rodent proof as described in ILHR 53.63, Wisconsin Administrative Code

(ll) “Privy-Vault” means a privy with watertight vault consisting of one (1) of the following:

(1) concrete sidewalls and bottom(poured in place)

(2) a prefabricated concrete tank

(3) an asphalt coated steel tank

(A) The tank shall be constructed insect and rodent proof per ILHR 52.63 Wisconsin administrative Code.

(mm) “Public Sewers” means a wastewater treatment system which utilizes collection of the sewage through underground sewer pipes, which all flow to one (1) collection station, where the wastewater is then treated. Public sewers provide service to more than one (1) residence, and each residence is charged a fee for wastewater collection and treatment.

(nn) “Seepage Bed” means an excavated area larger than five feet (5’) in width which contains a bedding of aggregate and has more than one (1) distribution line.

(oo) “Seepage Pit” means an underground receptacle so constructed as to permit disposal of effluent or clear wastes by soil absorption through its floor and walls.

(pp) “Septic Tank” means a tank which receives and partially treats sewage, through processes of sedimentation, oxygenation, flotation and bacterial action so as to separate solids from liquid in the sewage, and discharges and public buildings.

(qq) “Sewage” means the liquid and water carried wastes created in and conducted away from residences, industrial establishments and public buildings.

(rr) “Soil” means the unconsolidated material over bedrock.

(ss) “Soil Absorption” means any sewage treatment system which has a solid separation tank and utilizes distribution of the sewage effluent to unsaturated soil for treatment. Systems included in this definition are: conventional septic’s, mounds, in-ground pressure distribution, at-grade, etc.

(tt) “Soil Boring” means an observation pit dug by hand or backbone, a hole dug by auguring or a soil core taken intact and undisturbed with a probe.

(uu) “Soil Mottles” means spots or streaks of contrasting soil colors usually caused by soil saturation for some period of a normal year. Soil mottles are used as indicators of the seasonal high groundwater level.

(vv) “Soil Saturation” means the state when all the pores in a soil are filled with water.

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Water will flow from saturated soil into a bore hole.

(ww) “Topsoil” means the undisturbed surface horizon of a soil often characterized by a clack or dark grayish brown color due to a higher content of organic matter.

(xx) “Tribal Vendor’s Permit” means a permit issued by the Environmental Health and Safety Division for the installation of a private sewage system.

(yy) “Vent Cap” means an approved appurtenance used for covering the vent terminal of a soil absorption system, to avoid closure by mischief or debris, and still permit circulation of air within the system.

(zz) “Workmanship” means work of such character that will fully secure the results sought in all the sections of this law as intended for the safety, welfare and health protection of all individuals.

407.4. General Requirements

407.4-1.

(a) Every building or structure intended for human habitation or occupancy, within the scope of applicability of this law, shall have a Tribally-approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved only if no public sewers are available to service said buildings. Unless specifically approved by the Nation, the private sewage system to each building. A private sewage system may be owned by the property owner or by a special purpose district. The use of a community on-site waste disposal system or a system on a different parcel than the structure shall be subject to the same permit requirements and procedures as for systems serving public buildings. The private sewage system for newly constructed buildings shall be installed, inspected and approved before the building can be occupied.

(b) The type of on-site waste disposal system approved for use on a site shall be dependent upon site conditions. Approvable types of on-site waste disposal systems are:

- (1) Conventional soil absorption systems
- (2) In ground pressure distribution systems
- (3) Mound systems
- (4) Modified mound systems
- (5) At-grade systems
- (6) Holding tanks
- (7) Privies (pit and vault)

Approvable systems are not limited to this list, but systems not included on this list may only be approved by the Environmental Health and Safety Division on an individual basis.

(c) Additional restrictions

- (1) Domestic waste-all water carried wastes derived from ordinary living uses shall enter the septic or treatment tank or be discharged to a public or municipal treatment system.
- (2) Water supply-all new buildings intended for human habitation or occupancy shall be provided with a well and water supply system.

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(3) Cesspools-cesspools are prohibited.

(4) Clear water-The discharge of surface, rain and other clear water into a private sewage system is prohibited.

(5) Water shortener and iron filter backwash-Water softener or iron filter discharge may be directed to the private sewage system, a separate below ground surface soil absorption system or to the ground surface if a nuisance is not created.

(6) Floodplain-On-site waste disposal systems for new buildings will not be approved for construction within the floodplain. Existing buildings may have a system approved in the flood fringe subject to Departmental approval on an individual basis. All systems shall be flood-proofed to a height of at least two feet (2') above the one hundred (100) year flood elevation.

(d) Holding Tanks

(1) Holding tanks will not be approved to service any new residential construction. Holding tanks shall only be approved under the following circumstances:

(A) As a temporary method of waste containment until public sewers are available, not to exceed two (2) years from the date of installation.

Extended use of the holding tanks beyond the two (2) year period will require a permit for the Environmental Health and Safety Division. The holding tanks shall be disconnected and a connection shall be made upon availability of the public sewer system, and the tanks properly abandoned in the manner as is described in ILHR 83, Wisconsin Administrative Code.

(B) As a replacement system for existing filing soil absorption systems. Holding tanks shall be approved only if no other soil absorption system can be approved for the site.

(C) As an interim measure when there are delays in funding from outside funding agencies. The site must have received written approval for an on-site soil absorption system, and funding must have been appropriated to cover all installation costs. The system must be completed as soon as the funding is made available.

(D) As an interim measure for construction reason. If an approved soil absorption system is being constructed, and progress on construction is halted severe weather (ie, winter frost conditions), then holding tanks may be installed and used only until construction of the soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(E) For an existing residence where no other soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(F) For new construction of commercial buildings only where no other soil absorption system can be permitted.

(e) Privies

(1) Privies are prohibited for all new residential construction.

(2) Privies may be permitted only when the existing building served by the privy is not provided with an indoor plumbing system. One (1) plumbing fixture

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constituted indoor plumbing.

(3) All privies must meet the site requirements as described in IRHR 83.10, Wisconsin Administrative Code.

(4) When system upgrade becomes available or indoor plumbing is installed, then privy must be properly abandoned, and the building must be connected to an approved on-site waste disposal system or a public sewer system.

(5) All chemical, gas electrical, composting and other non-water using toilets must comply with all requirements of privies.

(f) Public Sewer Connection

(1) When public sewers become available to any buildings intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not to exceed one (1) year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer.

(2) The owner shall be required to connect to public sewers sooner than the one (1) year date if the existing private sewage system meets the definition of a failing system.

(3) When funding for the connection is available, the owner shall be required to connect to the public sewer sooner than the one (1) year date. The connection shall be made according of the contractor's construction schedule.

(4) All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in the same manner as is designated in Chapter NR 113, Wisconsin Administrative Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(g) Failing systems

(1) When a failing or malfunctioning private sewage system is encountered, the sewage disposal system shall be corrected or its use discontinued within that period of time required by departmental order, with a maximum time limit of one (1) year. A failing system is identified when one (1) or more of the following conditions apply:

(A) The failure of the private sewage system to accept sewage discharges and or there is back-up of the sewage to the structure the system services.

(B) The discharge of sewage to the surface of the ground or to a drain tile.

(C) The discharge of sewage to any waters within the exterior boundaries or adjacent to the operation of private sewage system.

(D) The introduction of effluent into zones of saturation which adversely affects the operation of private sewage system.

(E) The ponding of effluent within the soil absorption system.

(h) Incorporation of provisions by reference

(1) This chapter incorporates by reference the following rules, regulations and laws, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code governing the location, construction and use of the private sewage systems.

(A) State Statutes: 59.065, 59.07(51), 144, 145, 146.13, 146.14, and 968.10

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(B) Wisconsin Administrative Codes: NR 113; ILHR 82 and ILHR 83.

(2) These rules, regulations and laws shall be available upon request from the Environmental Health and Safety Division.

(3) These rules, regulations, and laws shall be used for purposes of this law only, and shall apply until amended or renumbered and then shall apply as amended or renumbered.

(4) References in these codes as to the responsibilities of the “State”, “Department”, “Department of Natural Resources”, and “County” shall be directed to the “Oneida Nation” and to the “Oneida Environmental Health and Safety Division”.

(i) Administration

(1) The Oneida Tribal Environmental Specialist shall be responsible for the administration of this law. The Environmental Specialist may delegate responsibilities to personnel employed by or assigned to assist the Environmental Specialist.

(j) Powers and Duties

(1) In administering this law, the Environmental Specialist shall have the following powers and duties:

(A) Perform duties, and delegate duties as may be required, to personnel assigned to or employed to assist the Environmental Specialist, to assure full and complete compliance with this law.

(B) Provide assistance to applicants preparing permit applications, and advise said applicants regarding provisions of this law.

(C) Review and approve plans for private on-site sewage treatment systems.

(D) Issue permits and perform site inspections for compliance with this law.

(E) Keep records of all permits issued, inspections made, work approved and other official actions.

(F) Report violations of this law or other land use regulations to the Tribal office designated by the Oneida Business Committee, as provided for in the Administrative Procedures Act.

(G) Have access to any premises for the purposes of performing said duties between 8:00 a.m. and 8:00 p.m. or at other times set by mutual agreement between the property owner or their agent and the Environmental Specialist. Application for permit is considered, for the purposes of this law, as the owner’s consent to enter the premises.

(H) Upon reasonable cause or question as to proper compliance, revoke any Tribal sanitary permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a building which is in violation of the provisions of this law, until compliance with this law is obtained.

(I) Issue and enforce orders to plumbers, property owners, their agents or contractors of the responsible party, to assure proper owners, their agents or contractors of the responsible party, to assure proper compliance with all

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provisions of this law. The Environmental Specialist may delegate this authority to the Tribal office designated by the Oneida Business committee, as provided for in the Administrative Procedures Act.

(2) Violations of this law which occur on leased land will be reported to the Oneida Land Office and the Oneida Land Office and the Oneida Law Office because said violations may constitute violations of the Tribal Land Lease.

(k) Repeal and effective date

(1) Tribal sanitary permits are obtained through the Oneida Environmental Health and Safety Division. Completed application shall be submitted for review to the Oneida tribal environmental Specialist. The permit shall be reviewed and processed with two (2) weeks of receiving the completed application package, except in the case of modified mound an experimental systems which may take longer to review.

(2) Every on-site waste disposal system installed, expanded, modified, or enlarged after the adoption date of this law shall require a Tribal Sanitary Permit.

(3) When a change of ownership occurs, the owner of system shall have the system inspected by a State of Wisconsin Licensed Plumber, Registered Sanitarian or other person accepted by the Environmental Health and Safety Division.

(4) A Tribal sanitary permit shall be obtained by the property owner, his/her agent or contractor, in the name of the property owner, prior to the construction of any building which requires a private sewage system. Any property owner, his/her agent or contractor, who starts construction on a building, prior to obtaining a Tribal sanitary permit, is in violations and may be subject to the penalties provided in this law.

(5) Before any private sewage system may be installed, enlarged, altered, modified or additions constructed, a Tribal sanitary permit must first be obtained by the property owner, his/her agent or contractor. Failure to comply with this requirement constitutes a violation of this law. Violations which occur on leased land may also constitute violations of the Tribal land lease.

(6) A Tribal sanitary permit shall be obtained prior to constructing or erecting a privy.

(7) If any part of a system has failed, the entire system shall be evaluated for compliance with existing codes.

407.5. Permits and Applications

407.5-1.

(a) Permit Codes

(1) The permit card issued by the Environmental Specialist to the property owner or his/her agent shall serve as the Tribal sanitary permit.

(2) The permit card shall be displayed at the site in such a manner that it will be visible from a road abutting the lot during all construction phases.

(3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Environmental Specialist or a Tribally-authorized inspector.

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(4) Failure to display the permit card shall be considered a violation of this section and may subject the property owner, his/her agent or contractor, to penalty provisions of this law.

(b) Application Requirements

(1) The Tribal sanitary permit application shall include the following information which shall be furnished by the applicant on forms provided by the Tribal Environmental Health and Safety Division, along with all applicable fees:

(A) Names and address of the applicant (owner of the site) and the plumber employed (when applicable).

(B) Legal description of the subject site by claim number, lot block and recorded subdivision or by metes and bounds. All legal descriptions must also include a plot 1/4-1/4 section description to the nearest forty (40) acres (i.e.: NW 1/4 of the SE 1/4, Section 12, T23N-R19E).

(C) All lot dimensions.

(D) Driving directions to the site

(E) Building use (single, family, duplex, multi-family, commercial, industrial, and Tribal roll number).

(F) Plot plan. Detailed plot plan dimensions are drawn to scale showing the lot size; the location of all septic tanks; holding tanks or other treatment tanks; building sewers—sanitary and storm; wells; water mains or water service; streams and lakes; dosing or pumping chambers; distribution boxes; effluent systems; dual disposal systems; replacement system areas; and the location of the building served. Adjoining properties shall be checked to insure that the site location distances and dimensions shall be shown on the detailed plot plan.

(G) Reference points. A vertical elevation reference point and a horizontal reference point.

(H) Soil boring and percolation test data related to the undisturbed and finished grade elevations, vertical elevation reference point and horizontal reference point. Surface elevations, vertical elevation reference point and horizontal point. Surface elevations shall be given for all soil borings. All soil borings and percolation tests shall be performed by a State of Wisconsin Certified Soil Tester.

(I) Occupancy. The maximum number of bedrooms in the residence shall be indicated. The number of employees(full time and part time on an 8-hour shift), estimated number of customers in an 8-hour shift, number of washing machines and disposition of commercial/retail buildings.

(J) Other specifications. Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe frictionless, pump performance curve, pump model manufacturer, and all piping information.

(K) Any other information deemed necessary by the Environmental Health and Safety Division.

(2) Pit privy permit applications shall be accompanied by soil data provided by a

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State of Wisconsin-license certified tester to a depth of three feet (3') below the proposed pit bottom. Soil data is not required when making application for a vault privy. The property owner shall be furnished with a copy of the Tribal privy construction requirements when the permit for a privy is issued.

(3) The Tribal Environmental Health and Safety Division reserves the right to refuse incomplete or incorrect permit applications or to delay issuance until corrected or completed applications are received.

(c) Permit Expiration

(1) Sanitary permits for private sewage systems, which have not been installed, shall expire two (2) years after the date of issuance. Permits may be renewed following written application to the Environmental Health and Safety Division by the proper owner, his/her agent or contractor, prior to the expiration date of the original permit.

(2) There shall be a fee for the renewal of a permit.

(3) The renewal shall be based on Oneida Sanitary Ordinance requirements in effect to the time of renewal.

(4) Changed requirements may impede the renewal.

(5) The property owner, his/her agent, or contractor, shall return the original permit card and receive a new card when the permit is renewed.

(6) All permits issued prior to the effective date of this law shall expire two (2) years from issue date unless renewed.

(7) If a permit has expired and the owner wants to build on the site, a new sanitary permit must be obtained, and the site shall be subject to the currently existing requirements, including any revisions made during the elapsed time period.

(d) Permit Replacement/Transfer

(1) If a sanitary permit is lost or destroyed, a replacement permit may be obtained from the Environmental Health and Safety Division. The land owner shall submit a written request, along with the permit replacement fee, to the Environmental Health and Safety Division, and a new sanitary permit shall be issued prior to installation of the system shall be subject to the following:

(A) The new property owner shall submit a written request to the Environmental Health and Safety Division to transfer the permit.

(B) The sanitary permit card shall be returned to the Department so that a new permit card may be issued.

(C) Transfer of ownership shall not affect the expiration date or renewal requirements. Any changes other than transfer of ownership shall require a new permit.

(D) The new property owner shall submit the permit transfer fee to the Environmental Health and Safety Division.

(e) Building alteration permits

(1) A tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

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(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly regarding the condition of the system shall be provided.

(B) The systems will be capable of handling the proposed wastewater load from the building to be served.

(C) The system will meet all minimum setback requirements of ILHR 83.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building serviced by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets the requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to ensure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(f) Change of plumbers

(1) A Tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from the that building or where the building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly, pursuant to this law. A State of Wisconsin Licensed Plumber's statement regarding the condition of the system shall be provided.

(B) The system will be capable of handling the proposed wastewater load from the building to be served.

(C) The systems will be capable of handling the proposed wastewater load from the building to be served.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building received by existing holding tanks will require an

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updated Holding Tank Agreement, one (1) which meets their requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to insure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(g) Change of Plumbers

(1) When an owner wishes to change plumbers, the owner must complete a Tribal Change of Plumbers Form, signed by the new plumber. The form must be submitted to the Environmental Health and Safety Division, along with the applicable fees.

(2) The change of plumbers shall take place prior to the installation of the private sewage system.

(h) Modified Mound and Experimental System Permits

(1) Sanitary permits of modified mounds and experimental systems shall only be approved for existing buildings. Not all sites are suitable for modified mounds and experimental systems.

(2) Sanitary permits for modified mounds and experimental systems shall be approved by the Environmental Health and Safety Division only on an individual basis.

(3) Modified mounds and experimental system sanitary permit applications are subject to all requirements of a regular sanitary permit, in addition to any additional requirements deemed necessary by the Environmental Health and Safety Division. Additional information may include, but is not limited to: more frequent inspections, additional soil borings, groundwater monitoring or contour maps.

(i) Site Evaluation

(1) A site evaluation may be necessary to determine the suitability of a lot for a private sewage system. Site evaluations will be made at the discretion of the Environmental Specialist. The evaluation shall take place within ten (10) working days of becoming aware of question of suitability and will be made prior to the issuance of the sanitary permit. The site evaluation will result in one (1) of the following:

(A) Issuance of the permit, provided all information on the application is correct and complete.

(B) Holding the application pending clarification of information or new information by the owner, the plumber or the certified Soil Tester.

(C) Denial of the permit if the site does not meet all the provisions of this law.

(2) Soil test pits shall be constructed which allow adequate visual observations of

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the soil provide in place. This is best accomplished by the construction of backhoe pits. The test pits shall be left in such a manner that will permit access to them for the evaluation of the soil protection were provided. Bore holes shall be either fenced or closed within five (5) days of the date of inspection.

(3) Site evaluations shall be done prior to issuance of permits for a mound system.

(j) Permit Denial

(1) When an on-site evaluation of a proposed private sewage system or pit privy reveals that the site is compliance with the requirements of this law, the permit application shall be approved. Written justification of the denial must be supplied to the owner of the Environmental Health and Safety Division within five (5) working days of the decision.

(k) Holding Tank Agreements

(1) Prior to the issuance of a sanitary permit for the installation of a holding tank, the owner of the holding tank, or his/her agent, shall sign and register a Holding Tank Agreement with the Oneida Nation or a State of Wisconsin Licensed Plumber. The purpose of the agreement is to ensure that the holding tank wastewater will be properly disposed of.

(2) Holding tank owner shall sign a servicing Contract with the Oneida Utilities for sewage disposal and must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing contract with the Oneida Utilities for regularly scheduled servicing of the holding tank by the Tribally-licensed septic tank pumper. Copies of the servicing contract shall be attached to the holding tank agreement.

(B) The holding tanks shall be chained and locked at all times, and the chain, lock and lock keys shall be the property of the Oneida Utilities, to prevent unauthorized removal of the holding tank wastewater.

(C) The Oneida Utilities shall keep a log of the holding tank servicing dates, owner's names and servicing locations, gallons serviced, and disposal locations for all owner's names and servicing locations, gallons serviced, and disposal locations for all holding tanks on registered Servicing Contracts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(3) Holding tanks owners who contract with a Non-tribal Septic Tank Pumping Service must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing Contract with the Non-tribal Septic Tank Pumping Service for regularly scheduled servicing of the holding tanks copies of the Servicing contract shall be attached to the Holding Tank Agreement.

(B) The holding tanks shall be chained and locked at all times.

(C) All Non-Tribal Septic Tank Pumping Services must meet the following requirements:

(i) The Septic Tank Pumper must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin

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Administrative Code.

(ii) The Septic Tank Pumper must follow all of the Nation's disposal requirements.

(D) The Non-tribal Septic Tank Plumber shall keep a log of the holding servicing dates, owners names, and servicing locations, gallons serviced, and disposal locations of all holding tanks on registered servicing contacts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(4) The signed Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.

(5) Removal of the holding tank wastewater by persons other than those employed by the Oneida Utilities, or those State of Wisconsin-licensed Septic Tank Plumbers approved by the Environmental Health and Safety Division, shall constitute a violation of this law. Such violations which occur on Tribally-leased land shall constitute a violation of the Tribal land lease.

(I) Maintenance Program

(1) All soil absorption system tanks shall be pumped by a Tribally-licensed or State of Wisconsin-licensed septic tank pumper within two (2) years of the date of installation and at least once every two (2) years thereafter, unless upon inspection the tank is found to have less than one third (1/3) of the volume occupied by sludge and scum.

(2) All private sewage systems installed after the date of adoption of this law shall be inspected once every two (2) years for system compliance and tank integrity. Additional inspections, or inspections of systems installed prior to the date of law adoption, may be performed upon request by the system owner.

(3) Inspection of a private sewage shall be conducted by a Registered Sanitarian, the Tribal Environmental Specialist, a Master Plumber, a Journeyman Plumber or a Registered Plumber licensed by the State. Inspections may also be performed by training program and have received authorization from the Nation. Re-certification of the authorized tribal employees shall be required on a yearly basis, and shall be provided by the Environmental Health and Safety Division. The inspections shall be performed at the same time as the tank pumping.

(4) The owner of said soil absorption system shall submit information as to the condition of the system and tank, and the date of pumping, to the Tribal Environmental Health and Safety Division within ten (10) days of the date of inspection of the tank is made by an authorized Tribal employee.

(5) The owner of a holding tank shall sign and register a Holding Tank Agreement, as specified in section 407.5-1(i) of this law, and shall be subject to all requirements stated in section 407.4-1(d)(1).

(6) Non-tribal Septic Tank Pumpers who are approved by the Environmental Health and Safety Division to service on-site waste disposal systems must comply with the following requirements:

(A) The Septic Tank Pumpers must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative

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Code.

(B) The Septic Tank Pumper must obtain a Tribal Vendor's Permit prior to servicing any tanks.

(C) The Septic Tank Pumper must follow all of the Nation's disposal and reporting requirements.

(m) Permit fees shall be set and periodically amended by the Oneida Business Committee. Fees may be reduced by fifty percent (50%) if the inspections are performed by Indian Health Service agents. All fees must accompany permit application. Fees are payable by check to the "Oneida Nation". No out-of-state checks will be accepted. Failure to pay permit fees constitutes a violation of this law. Applicable fees are as follows:

(1) Private Residential Building Sanitary Permit:

(A) Conventional soil absorption systems: \$20.00

(B) In-ground pressure distribution system: \$20.00

(C) Holding tanks: \$20.00

(D) Mound systems, modified mound systems, at grade systems and experimental systems: \$50.00

(2) Public and Commercial Building Sanitary Permits:

(A) Conventional soil absorption systems: \$45.00

(B) In-ground pressure distribution systems: \$45.00

(C) Holding tanks: \$90.00

(D) Mound systems, modified mound systems, at grade systems and experimental systems: \$150.00

(3) Other Fees:

(A) Sanitary renewal: \$5.00

(B) Change of Plumber fee: \$5.00

(C) Privy permits: \$5.00

(D) Building alteration permit fees:

Private Residential building	\$20.00
Public and Commercial buildings	\$45.00

407.6-1. Inspections

407.6-1. General

(a) All private sewage shall be inspected after construction and before backfilling. The inspections shall be performed within the following work day excluding Saturdays, Sundays, and holidays after receiving notice from the licensed plumber responsible for the installation.

(b) A Tribal Site Inspection form shall be completed by the Environmental specialist or Tribal inspector. A copy of the report shall be sent to the system owner.

407.6-2. Notice for inspection.

(a) The plumber employed to install the system shall notify the Environmental Specialist in person, by telephone or in writing when the on-site waste disposal system is ready for inspection.

(b) The owner shall be notified of regular inspections within twenty-four (24) hours of the inspection. If the owner cannot be reached within the twenty-four (24) hour period, the

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inspection shall continue as scheduled. No prior notification shall be required for compliance inspections for holding tanks.

407.6-3. Preparation for inspection

(a) When an on-site waste disposal system is ready for inspection, the plumber employed to install the system shall make such arrangements as will enable the Environmental Health and Safety Division inspector to inspect all parts of the system.

(b) The plumber shall have present the proper apparatus and equipment for conducting the inspection and shall furnish such assistance as may be necessary in making a proper inspection.

407.6-4. Holding Tank Inspections

(a) All site constructed holding tanks shall be inspected after the forms have been set and reinforcing is in place; but before any concrete has been poured. Concrete may be poured only after it has been determined that the tank, as formed, complies with the plans as approved by the Department.

(b) This inspection shall not eliminate the need for an inspection after the installation has been completed.

407.6-5. Privy Inspections

(a) All privies installed shall be inspected for compliance with this law. The home owner or his agent shall notify the Environmental Health and Safety Division for inspection immediately after the privy has been constructed.

(b) Privies may be inspected periodically after the initial inspection.

407.6-6. Mound Inspections

(a) All mound systems shall be inspected during construction by an inspector certified by the Nation. The plumber installing the mound shall notify the Environmental Specialist twenty-four (24) hours in advance of the installation. Four (4) inspections of the system shall be made during the first year of the mound operation in accordance with Tribal guidelines. Annual inspections may be made after the first year of operation, and may be more frequent if deemed necessary by the Environmental Specialist.

407.6-7. Re-inspections

(a) The Environmental Specialist may require additional inspections other than the inspection prior to backfilling, or if the initial inspection disclosed that the installation was incomplete at the time the installer indicated it would be complete, or if the system was not in conformance with the requirements stated in this law.

407.6-8. As-built Plans

(a) All on-site waste disposal systems installed, enlarged, modified, or expanded after the adoption date of this law shall require as-built plans to be registered with the Environmental Health and Safety Division.

(b) The plumber employed to install the system shall submit the as-built plans to the Environmental Health and Safety Division within five (5) days of the installation of the system.

(c) The as-built plans shall include all dimensions described in Section 407.5-1(b)(1)(F), of this law. It shall also include the location of all manhole risers installed as part of the system for which the as-built is being developed. The manhole covers and other portions of the system shall be located from two (2) permanent points (i.e., corners of the building served).

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808 407.6-9. Covering of Work

809 (a) No part of the private sewage system may be backfilled until it has been inspected and
 810 approved. If any part is covered before being inspected and approved it shall be uncovered
 811 at the discretion of the Environmental Health and Safety Division inspector or Indian
 812 Health Service Inspector.

813 407.6-10. Defects in Materials and Workmanship

814 (a) If inspection discloses defective material, design, siting or unworkmanlike construction
 815 which does not conform to the requirements of this law, the nonconforming parts shall be
 816 removed, replaced and re-inspected.

817 **407.7. Administration and Enforcement**

818 407.7-1. Variances

819 (a) A request for a variance to the conditions or requirements of this law may be made to
 820 the Environmental Specialist. The Environmental Specialist shall not have the authority to
 821 approve any variance request. The Environmental Resource Board shall issue written
 822 approval or denial of any variances requested.

823 (b) Parties disagreeing with the determination of the Environmental Resource Board may
 824 contest the decision by filing a complaint to the Judiciary in accordance with section
 825 407.7-5.

826 407.7-2. Violations

827 (a) Any person who violates any provision of this law is subject to penalties and
 828 forfeitures provided for by this law and any resultant rules. Actions which constitute a
 829 violation are described in, but not limited to, the following:

- 830 (1) Installing a new on-site waste disposal system without first obtaining a Tribal
 831 Sanitary Permit.
- 832 (2) Modifying, altering, enlarging or constructing additions to an existing on-site
 833 waste disposal system without first obtaining a Tribal Sanitary Permit or a
 834 Building Alteration Permit.
- 835 (3) Servicing or removing sewage from an on-site waste disposal system tank
 836 without a valid State of Wisconsin or Tribal license.
- 837 (4) Failing to obey any requirement of an Administrative Enforcement Order.
- 838 (5) Failing to properly display the Sanitary Permit card.
- 839 (6) Failing to disconnect a failing private on-site waste disposal system within the
 840 Order. Building served by disconnected failing on-site systems shall be
 841 reconnected to public sewer systems.
- 842 (7) Failing to connect a building served by a private on-site waste disposal system
 to a public sewer system within the time allotted by section 407-4.1(f) of this law,
 or the date stated in the Order.
- (8) Installing, modifying, altering, enlarging or making additions to any part of an
 on-site waste disposal system without a valid State Plumbing License. Privies are
 exempt from this requirement.
- (9) Failing to pay Tribal permit fees
- (10) Failure to correct a failing on-site waste disposal system within three (3)
 months of an Administrative Order. A failing on-site waste disposal system
 constitutes a threat to public health.

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(11) Failure to maintain a system through regularly scheduled pumping, pursuant to holding tank agreement and maintenance program of this law. Failing to maintain a holding tank through regularly scheduled pumping constitutes a threat to public health.

407.7-3. Administrative Orders

(a) The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this law occurs, to provide the owner or agent the opportunity to bring their action into compliance with the provisions of this law.

(b) The Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the right to contested the matter with the Oneida Judiciary.

407.7-4. Penalties

(a) The Environmental Resource Board is hereby granted administrative rulemaking authority to establish penalties for violations of this law. Except as provided in section 407.5-5(b), forfeitures for violations shall amount to not less than ten dollars (\$10) and not greater than fifty dollars (\$50) per violation. Each day such violation continues constitutes a separate offense.

(b) Forfeitures for violations which constitute a threat to public health shall not be less than fifty dollars (\$50) and not more than two hundred dollars (\$200) per violation. Each day such violation continues constitutes a separate offense.

407.7-5. Appeal Permit Decision. Any person wishing to contest a decision of the Department related to a permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

407.7-6. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service*. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue*. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court*. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation*. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal

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member's per capita payment pursuant to the Per Capita law.

407.7-7. Severability

(d) Conflict with Federal Law. Should any part of this ordinance be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for purposes of that particular funding and that inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or departments directly affected.

407.7-8. Waiver of liability

(a) This law shall not create a liability on the part of or a cause of action against the Nation, or any employee thereof, for any private on-site sewage treatment system which may not function as designed. There shall be no liability of warranty for any site which is approved or denied. The issuance of a sanitary permit and the formal inspection of such a system does not warrant the system's function, nor is there a guarantee that the system is free of defects or that all aspects of the system comply with the requirements or this ordinance.

Adopted - BC-10-28-88-A

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi? yuhwatsya'té tewatenhotúkwa? Ukwehuwé'ne
That of the earth one opens it up Oneida Nation

609.1. Purpose and Policy
609.2. Adoption, Amendment, Repeal
609.3. Definitions
609.4. Environmental Resource Board

609.5. Land Access Map
609.6. Trespass
609.7. Violations and Appeals

609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this ~~Law~~law is to prevent improper access, use and ~~Trespass~~trespass to Tribal ~~Lands~~lands.

609.1-2. *Policy.* It is the policy of the ~~Tribe~~Nation to limit access to Tribal ~~Lands~~lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This ~~Law~~law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.

609.2-2. This ~~Law~~law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

609.2-3. Should a provision of this ~~Law~~law or the application thereof to any ~~Person~~person or circumstances be held as invalid, such invalidity does not affect other provisions of this ~~Law~~law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this ~~Law~~law and a provision of another law, the provisions of this ~~Law~~law controls.

609.2-5. This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

609.2-6. This ~~Law~~law may not be construed to preclude the ~~Tribe~~Nation from pursuing relief for criminal ~~Trespass~~trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this ~~Law~~law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal ~~Lands~~lands.

(b) “Fine” means a monetary punishment issued to a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law, which is payable to ERB or the Department within the amount of time designated by the ~~Rules~~rules.

(c) “Lease” means any lease or agreement, including business site leases, entered into by the ~~Tribe~~Nation and any ~~Person~~person to allow the use of Tribal ~~Lands~~lands.

~~(d)~~ “Nation” means the Oneida Nation.

~~(e)~~ “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

~~(f)~~ “Penalty” means a punishment, other than a ~~Fine~~fine, imposed on a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law and may include, but

is not limited to, the confiscation of equipment, the imposition of a ~~Wildlife~~wildlife protection assessment (civil recovery value), and restitution.

(fg) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(gh) “Trespass” means the unauthorized use or entry on Tribal ~~Lands~~lands, including unauthorized uses under a ~~Tribal~~any law, ~~rule~~, permit or ~~Lease~~.

(h) ~~“Tribal” or “Tribe” means~~ lease of the ~~Oneida Tribe of Indians of Wisconsin~~Nation.

(i) “Tribal Land” means all ~~Tribal of the Nation’s~~ trust lands, and any land or interest in land held by the ~~Oneida Tribe~~Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this ~~Law~~law and enforce the provisions of this ~~Law~~law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) ~~Hear and decide, as the original hearing body, contested cases that may arise under this Law.~~

(d) ~~Impose hearing costs and restitution against the Person for damages caused by a violation of this Law.~~

(e) ~~Determine which Tribal~~ Landland will be posted and ensure the appropriate signs are posted.

(fd) Implement and interpret the provisions of this ~~Law~~law.

(ge) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal ~~Land~~land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal ~~Land~~land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all ~~Persons~~persons who are granted land access permission by the ~~Tribe~~Nation through a permit or ~~Lease~~lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the ~~Tribe~~Nation; and ~~Persons~~persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the ~~Tribe~~Nation.

(1) A Conservation Warden or Oneida Police Officer may require a ~~Person~~person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all ~~Persons~~persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such ~~Designation~~designation is deemed beneficial to the ~~Tribe~~Nation and where such ~~Designation~~designation does not pose significant risk of damage to the ~~Nation’s~~ policies of the ~~Tribe~~ and/or the land’s cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this ~~Law~~law may be construed as preventing the following ~~Persons~~persons from entering Tribal ~~Land~~land, regardless of the land ~~Designation~~designation:

(a) Employees of the ~~Tribe~~Nation who are performing their job duties;

(b) Those ~~Persons~~persons who are performing grant or contractual obligations related to the Tribal ~~Land~~land and on behalf of the ~~Tribe~~Nation;

(c) Emergency personnel who are providing, or attempting to provide, services; and

(d) Those ~~Persons~~persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the ~~Tribe~~Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal ~~Land~~land is designated as ~~Limited Access~~limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the ~~Designation~~designation.

(a) Amendments may be proposed by any ~~Person~~person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

(i) published in the ~~Tribal~~Nation’s newspaper; and

(ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any ~~Person~~person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the ~~Tribal~~Nation's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A ~~Person~~person ~~Trespasses~~trespasses if the ~~Person~~person enters or otherwise occupies Tribal ~~Land~~land and:

(a) Refuses to leave land to which the ~~Person~~person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the ~~Person~~person to enter such land does not exist, or has been expressly denied or revoked. A ~~Person~~person has been noticed that permission by the landowner or occupant for such ~~Person~~person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the ~~Tribal~~Nation's website and/or in the ~~Tribal~~Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

- (1) A sign at least eleven ~~(11)~~ inches (11”) square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the ~~Person~~person giving the notice, followed by the word “owner” if the ~~Person~~person is the holder of legal title to the land or by the word “occupant” if the ~~Person~~person is a lawful occupant of the land, but not the holder of legal title.
- (2) Markings at least one ~~(1)~~ foot (1’) long and, in a contrasting color, the phrase “private land” and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.
- (c) Does any of the following without proper authorization through a ~~Lease~~lease, permit or as otherwise required under applicable law:¹
- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
 - (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
 - (3) Engages in any act, or attempted act of hunting, trapping or fishing.
 - (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
 - (5) Erects, puts up, fastens, prints, or paints upon another’s property, notices, advertisements, signs or other writing designed to communicate to the general public.
 - (6) Parks or drives any vehicle on the land.
 - (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
 - (8) Uses or possesses ~~Leased~~leased or sub-~~Leased~~leased lands beyond the possessory rights granted by such ~~Lease~~lease or sub-~~Lease~~lease.
 - (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

~~609.7-1. Issuance of a Citation. Any Person who violates any provision~~ Citations. Citations for the violation of this ~~Law is guilty of a civil infraction,~~law and ~~may be/or orders~~ issued ~~apursuant to this law may include fines, penalties and conditional and other orders in accordance with the citation, in writing, by a Conservation Warden or Oneida Police Officer. schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.~~ The issuance of a citation or ~~Fine~~fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this ~~Law~~law.

~~(a) The Oneida Business Committee, upon recommendation of the Environmental Resource Board, may adopt a citation schedule.~~

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The ~~citation must state that the Environmental Resource Board may, in addition to the citation~~ Oneida Police Department, by means of Oneida Police Officers and associated Fine, impose hearing costs and Penalties against the Person for Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. ~~Citation Hearing~~ and Appeals of Contested Actions. All citations, orders and declarations issued pursuant to this ~~Law must~~ law shall include a ~~Prehearing~~ pre-hearing date with the Judiciary Trial Court which ~~must~~ shall be set for the next scheduled monthly ~~Prehearing~~ prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation ~~must~~ shall appear at the ~~Prehearing~~ prehearing, at which time the ~~Environmental Resource Board~~ Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The ~~Environmental Resource Board~~ Judiciary shall schedule a ~~Hearing~~ hearing as expeditiously as possible, provided that it ~~must~~ shall be scheduled within ninety (90) days of the date of the ~~Prehearing~~ prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested ~~Hearings~~ hearings, the ~~Environmental Resource Board~~ Judiciary may also make conditional orders at the ~~Prehearing~~ prehearing which are effective until the matter is resolved.

(a) ~~The Environmental Resource Board shall conduct Prehearings and Hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, Rules, laws or policies governing Tribal administrative hearings.~~

(b) ~~Community Service~~. Community service may be substituted for ~~Fines~~ monetary fines at the ~~Environmental Resource Board's~~ Judiciary's discretion, provided that, if so substituted, the ~~Board~~ Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the ~~Fine~~ fine.

(c) ~~(b) Allocation of Citation Revenue~~. All ~~Fines and Penalties issued by citations~~ must shall be paid to the Environmental Resource Board or its designee, the proceeds of which ~~must~~ shall be contributed to General Fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to ~~makes~~ make the required payments through the garnishment process contained in the Garnishment ~~Law~~ law and/or by attaching the judgment to a Tribal ~~Member's~~ member's per capita payment pursuant to the Per Capita ~~Law~~ law.

(e) ~~Community Service~~. Community service may be substituted for monetary Fines and Penalty assessments at ERB's discretion, provided that if so substituted, ERB shall use the rate of one (1) hour per ten dollars (\$10) of the Fine or Penalty assessment.

(f) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure, provided that the appeal must be filed within thirty (30) days of the date of the Environmental Resource Board's determination.

~~609.7 3. Appeals from the Environmental Resource Board Decision. Any party of interest may appeal a decision of the Environmental Resource Board to the Tribe's judicial system.~~

End.

Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A
Emergency Amended – BC 07-08-15-C
Amended – BC-01-13-16-C

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi? yuhwatsya'té tewatenhotúkwa? Ukwehuwé'ne
That of the earth one opens it up Oneida Nation

609.1. Purpose and Policy
609.2. Adoption, Amendment, Repeal
609.3. Definitions
609.4. Environmental Resource Board

609.5. Land Access Map
609.6. Trespass
609.7. Violations and Appeals

609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this law is to prevent improper access, use and trespass to Tribal lands.

609.1-2. *Policy.* It is the policy of the Nation to limit access to Tribal lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.

609.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

609.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law controls.

609.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

609.2-6. This law may not be construed to preclude the Nation from pursuing relief for criminal trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal lands.

(b) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(c) “Lease” means any lease or agreement, including business site leases, entered into by the Nation and any person to allow the use of Tribal lands.

(d) “Nation” means the Oneida Nation.

(e) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(f) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment, the imposition of a wildlife protection assessment (civil recovery value), and restitution.

(g) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(h) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under any law, rule, permit or lease of the Nation.

(i) “Tribal Land” means all of the Nation’s trust lands, and any land or interest in land held by the Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this law and enforce the provisions of this law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

(d) Implement and interpret the provisions of this law.

(e) As it deems appropriate, create rules to prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of rules establishing permissible and/or prohibited uses, the Environmental Resource Board shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all persons who are granted land access permission by the Nation through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Nation; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Nation.

(1) A Conservation Warden or Oneida Police Officer may require a person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate

land as Open Access where such designation is deemed beneficial to the Nation and where such designation does not pose significant risk of damage to the Nation's policies and/or the land's cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this law may be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

- (a) Employees of the Nation who are performing their job duties;
- (b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Nation;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal land is designated as limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

- (i) published in the Nation's newspaper; and
- (ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any

comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the Nation's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

(a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Nation's website and/or in the Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

(1) A sign at least eleven inches (11") square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.

(2) Markings at least one foot (1') long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:¹

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
- (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
- (3) Engages in any act, or attempted act of hunting, trapping or fishing.
- (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
- (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
- (6) Parks or drives any vehicle on the land.
- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or sub-leased lands beyond the possessory rights granted by such lease or sub-lease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

609.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the citation schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The issuance of a citation or fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A
Emergency Amended – BC 07-08-15-C
Amended – BC-01-13-16-C

Title 4. Environment and Natural Resources—Chapter 401
TRIBAL ENVIRONMENTAL RESPONSE
Latihwatsyahalé·tu kayanl̥hslaʔ
They clean up the earth laws

401.1. Purpose and Policy	401.7. Discharge of Hazardous Substances
401.2. Adoption, Amendment, Conflicts	401.8. Remedial Actions
401.3. Definitions	401.9. Case Closure or No Further Action
401.4. Jurisdiction	401.10. Enforcement and Penalties
401.5. Tribal Environmental Response Program (TERP)	401.11. Appeals
401.6. Environmental Quality Standards	

401.1. Purpose and Policy

401.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

401.1-2. It is the policy of the ~~Tribe~~Nation to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

401.2. Adoption, Amendment, Conflicts

401.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C.

401.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

401.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

401.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

401.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

401.3. Definitions

401.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “All Appropriate Inquiries” means the process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(b) “Contamination” or “contaminated” means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

(c)–___ “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.

(d)–___ “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.

(e)–___ “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.

(f)–___ “Groundwater” means any water contained beneath the ground surface.

(g)–___ “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:

(1)–___ a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.

(2)–___ those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.

(3)–___ petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.

(h)–___ “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.

(j)–___ “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the [TribeNation](#).

(k)–___ “Operator” means any person who operates a site.

(l)–___ “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.

(m)–___ “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

(n)–___ “Practicable” means remedial action is capable of being implemented, taking into account:

(1)–___ The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(2)–___ The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.

(o)–___ “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.

(p)–___ “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.

(q)–___ “Responsible party” means any person who, under this law, is required to:

(1)–___ take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(2)–___ reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

(r)–“Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.

(s)–___ “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.

(t)–“Tribal entity” means a board, committee, commission, department, division, or agency of the Oneida Tribe of Indians of Wisconsin Nation.

401.4. ___ Jurisdiction

401.4-1. ___ *Personal Jurisdiction*. This law shall apply to:

(a)–___ all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;

(b)–___ individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and

(c)–___ individuals who have consented to the jurisdiction of the TribeNation or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the TribeNation:

(1)–___ By entering into a consensual relationship with the TribeNation, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2)–___ By other facts which manifest an intent to consent to the authority of the TribeNation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

401.4-2. ___ *Territorial Jurisdiction*. This law extends to all land within the exterior boundaries of the Reservation of the TribeNation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the TribeNation within the State of Wisconsin.

401.5. ___ Tribal Environmental Response Program (TERP)

401.5-1. ___ The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

401.5-2. ___ Under the TERP, the Division shall:

(a)–___ provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.

(b)–___ conduct and/or oversee assessments and investigations of sites with contamination concerns.

(c)–___ identify potentially responsible parties to clean up contaminated sites.

(d)–___ require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.

(e)–___ oversee and enforce required remedial actions.

(f)–develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g)– maintain a public record of remedial actions conducted at a contaminated site.

401.5-3.– *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a)– orders to prevent the discharge of a hazardous substance.

(b)– orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.

(c)– orders to require a responsible party to take action to prevent and/or abate contamination.

401.5-4.– *Emergency Situations.* Chapter 35302 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

401.6. Environmental Quality Standards

401.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

401.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

(1)–a) The notice shall contain a deadline for comments to be received from any person.

(2)–b) The Division shall review and consider comments received before approving the new or revised standards.

401.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

401.7. Discharge of Hazardous Substances

401.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 401.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

(a)– Any person who possesses or controls a hazardous substance which is discharged;

(b)– Any person who causes the discharge of a hazardous substance; and

(c)– Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

401.7-2.– *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

401.7-3.– *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any

175 discharge has caused contamination. The initial assessment shall include sampling and/or
176 testing of the site where the discharge of a hazardous substance has occurred.

177 | (a) ~~___~~ Evidence that indicates contamination of a site has occurred, or may have
178 occurred includes, but is not limited to:

179 | (1) ~~___~~ visible soil contamination;

180 | (2) ~~___~~ presence of free product or vapors in soils, basements, sewers or utility
181 lines, surface water or groundwater; and

182 | (3) ~~___~~ reports, environmental assessments or routinely gathered monitoring
183 data that indicates contamination has occurred or may have occurred.

184 | (b) ~~___~~ Groundwater samples shall be collected for analysis and evaluation to determine
185 whether the groundwater poses any public health and welfare concerns.

186 | (c) ~~___~~ Whether contamination exists shall be based on the level of contamination as
187 compared to ~~Tribally adopted~~ environmental quality standards adopted by the Nation.

188 401.7-4. ~~___~~ The Division shall evaluate the harmfulness of the discharge of a hazardous substance
189 based on the initial assessment and shall:

190 | (a) ~~___~~ publish the results of the initial assessment, along with a notice that the Division
191 will accept comments on the results for at least thirty (30) days after the initial
192 publication, in two (2) consecutive issues of the Kalihwisaks; and

193 | (b) ~~___~~ mail the results of the initial assessment, along with a notice that the Division will
194 accept comments on the results for at least thirty (30) days after the initial publication of
195 the results in the Kalihwisaks, to all owners of property located within one thousand two
196 hundred (1,200) feet of the outer boundaries of the property that is the subject of the
197 initial assessment.

198 401.7-5. ~~___~~ The Division shall accept comments on the results of the initial assessment for at least
199 thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall
200 compile, review and respond to all comments. Responses will be recorded and published in a
201 document available to the public.

202 401.7-6. ~~___~~ A person who possesses or controls a hazardous substance which is discharged or
203 causes the contamination of a site shall take remedial action.

204 401.7-7. ~~___~~ A person who voluntarily assumes responsibility for performance of, or payment of,
205 remedial actions in accordance with a plan that has been approved through the TERP, shall not
206 be subject to enforcement actions for the contamination if he or she complies with the plan.

207 401.7-8. ~~___~~ Except as provided in 401.7-10, the following persons are responsible parties:

208 | (a) ~~___~~ The current owner and operator of the site;

209 | (b) ~~___~~ Any owner or operator of the site at the time the discharge or contamination
210 occurred;

211 | (c) ~~___~~ Any person who arranged for the disposal or treatment of the hazardous
212 substance, or arranged for the transportation of the hazardous substance for disposal or
213 treatment;

214 | (d) ~~___~~ Any person who transports the hazardous substance and selects the disposal site;
215 and

216 | (e) ~~___~~ Any person who, by any act or omission, caused or contributed to the discharge or
217 contamination.

218 401.7-9. ~~___~~ Exemptions. The following persons are not “responsible parties” under this law:

219 | (a) ~~___~~ Any person discharging in accordance with a permit or program approved under
220 federal or Tribal law.

221 | (b) ~~___~~ Law enforcement officers and members of a fire department using hazardous
222 substances in carrying out their responsibilities to protect public health, safety and

welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) ~~Any~~ person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) ~~Any~~ person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(1) ~~An~~ act of nature;

(2) ~~An~~ act of war; or

(3) ~~An~~ act or omission of a third party, including but not limited to a trespasser, other than:

(A) ~~An~~ employee or agent of the person asserting the defense; or

(B) ~~Any~~ person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) ~~Any~~ person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

(1) ~~To~~ establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) ~~Any~~ person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

(1) ~~the~~ person did not cause the contamination on the property;

(2) ~~the~~ person establishes that all disposal of hazardous substances occurred before the person acquired the property;

(3) ~~the~~ person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and

(4) ~~the~~ person is not affiliated with a party liable for any contamination.

401.7-10. ~~Where~~ there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

401.8. ~~Remedial Actions~~

401.8-1. ~~A~~ responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

401.8-2. ~~If~~, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

401.8-3. ~~The~~ Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

(a) ~~the~~ replacement and/or removal of injured plant and animal life or contaminated soil.

(b) ~~the~~ treatment of contaminated soils and/or surface and/or groundwater.

(c) ~~___~~ adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.

(d) ~~___~~ the replacement or repair of faulty equipment.

(e) ~~___~~ other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

401.8-4. ~~___~~ Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

401.8-5. ~~___~~ In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

401.8-6. ~~___~~ Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

401.9. ~~___~~ Case Closure or No Further Action

401.9-1. ~~___~~ The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

401.9-2. ~~___~~ Sampling shall be conducted at the completion of the remedial action when:

(a) ~~___~~ The hazardous substance discharge is in contact with groundwater.

(b) ~~___~~ The amount, identity or duration of the contamination is unknown.

(c) ~~___~~ Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

401.9-3. ~~___~~ The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

401.9-4. ~~___~~ If additional remedial action is required for a previously closed case, the Division:

(a) ~~___~~ Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.

(b) ~~___~~ May require the responsible parties to achieve compliance with ~~Tribal~~ the Nation's public health and environmental laws, within a time period established by the Division.

401.10. Violations, Enforcement and Penalties Appeals

401.10-1. Compliance Orders. If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

(a) ~~___~~ Take remedial action to prevent or abate the discharge of a hazardous substance; and/or

(b) ~~___~~ Allow the investigation of a site believed to be contaminated or under threat of contamination.

401.10-2. Penalty Schedule. The ~~Oncida Business Committee shall~~ Environmental Resource Board is delegated rulemaking authority to adopt a ~~fine~~ penalty schedule, upon recommendation

of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a ~~fine~~penalty in accordance with the fine schedule. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

~~(a) Each day a violation exists or continues shall constitute a separate offense.~~

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by the Division at the Owner's expense.

~~(b) _____~~ Any person who is a lessee of the ~~Tribe~~Nation who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the ~~Land Commission~~Division of Land Management to consider potential lease violations.

401.11. Appeals

~~401.11-1. Appeal of Compliance Orders~~ A person may appeal a compliance order issued by the Division by filing a written appeal with the Division Director within ten (10) business days after the order is issued.

~~(a) The Division Director shall uphold, revise or reverse the order, in writing, within five (5) business days after receiving the appeal.~~

~~(b) A person may appeal the Division Director's decision by filing a written appeal with the Environmental Resources Board within ten (10) business days after the Division Director's decision.~~

~~(1) The Environmental Resources Board shall conduct a hearing on the Division Director's decision and shall uphold, revise or reverse the decision of the Division Director.~~

~~(2) The Environmental Resources Board shall post and publish its final decision, within ten (10) business days after the hearing. The Environmental Resources Board shall include in its decision specific facts which are the basis for its decision, and shall forward the decision to the parties of the appeal.~~

~~401.11-2. Contesting the Issuance of a Fine.~~ Any person issued a fine under this law may contest the fine by attending a hearing before the Environmental Resources Board.

~~(a) The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued.~~

~~(1) If the person does not wish to contest the fine, he or she shall pay the fine by the hearing date specified on the fine.~~

~~(b) After the hearing, the Environmental Resources Board shall determine whether the person is responsible for the fine, as was issued by the Division, and may set a new date for when the fine shall be paid.~~

~~401.11-3. Appeals from the Environmental Resources Board~~401.10-3. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision.* ~~Any party of interest may appeal a decision of the Environmental Resources Board to the Judiciary~~ *Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal law member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-09-12-12-B

Amended – BC-02-25-15-C

Title 4. Environment and Natural Resources—Chapter 401
TRIBAL ENVIRONMENTAL RESPONSE
Latihwatsyahalé·tu kayanl̕hsla?
They clean up the earth laws

401.1. Purpose and Policy	401.7. Discharge of Hazardous Substances
401.2. Adoption, Amendment, Conflicts	401.8. Remedial Actions
401.3. Definitions	401.9. Case Closure or No Further Action
401.4. Jurisdiction	401.10. Enforcement and Penalties
401.5. Tribal Environmental Response Program (TERP)	401.11. Appeals
401.6. Environmental Quality Standards	

401.1. Purpose and Policy

401.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

401.1-2. It is the policy of the Nation to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

401.2. Adoption, Amendment, Conflicts

401.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C.

401.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

401.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

401.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

401.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

401.3. Definitions

401.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “All Appropriate Inquiries” means the process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(b) “Contamination” or “contaminated” means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

- (c) “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.
- (d) “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.
- (e) “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.
- (f) “Groundwater” means any water contained beneath the ground surface.
- (g) “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:
- (1) a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.
 - (2) those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.
 - (3) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.
- (h) “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.
- (j) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (k) “Operator” means any person who operates a site.
- (l) “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.
- (m) “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (n) “Practicable” means remedial action is capable of being implemented, taking into account:
- (1) The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and
 - (2) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.
- (o) “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.
- (p) “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.
- (q) “Responsible party” means any person who, under this law, is required to:

(1) take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(2) reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

(r) “Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.

(s) “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.

(t) “Tribal entity” means a board, committee, commission, department, division, or agency of the Nation.

401.4. Jurisdiction

401.4-1. *Personal Jurisdiction.* This law shall apply to:

(a) all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;

(b) individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and

(c) individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Nation:

(1) By entering into a consensual relationship with the Nation, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

401.4-2. *Territorial Jurisdiction.* This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin.

401.5. Tribal Environmental Response Program (TERP)

401.5-1. The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

401.5-2. Under the TERP, the Division shall:

(a) provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.

(b) conduct and/or oversee assessments and investigations of sites with contamination concerns.

(c) identify potentially responsible parties to clean up contaminated sites.

(d) require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.

(e) oversee and enforce required remedial actions.

(f) develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g) maintain a public record of remedial actions conducted at a contaminated site.

401.5-3. *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a) orders to prevent the discharge of a hazardous substance.

(b) orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.

(c) orders to require a responsible party to take action to prevent and/or abate contamination.

401.5-4. *Emergency Situations.* Chapter 302 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

401.6. Environmental Quality Standards

401.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

401.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

(a) The notice shall contain a deadline for comments to be received from any person.

(b) The Division shall review and consider comments received before approving the new or revised standards.

401.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

401.7. Discharge of Hazardous Substances

401.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 401.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

(a) Any person who possesses or controls a hazardous substance which is discharged;

(b) Any person who causes the discharge of a hazardous substance; and

(c) Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

401.7-2. *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

401.7-3. *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any

discharge has caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

(1) visible soil contamination;

(2) presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and

(3) reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) Whether contamination exists shall be based on the level of contamination as compared to environmental quality standards adopted by the Nation.

401.7-4. The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

401.7-5. The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be recorded and published in a document available to the public.

401.7-6. A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

401.7-7. A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

401.7-8. Except as provided in 401.7-10, the following persons are responsible parties:

(a) The current owner and operator of the site;

(b) Any owner or operator of the site at the time the discharge or contamination occurred;

(c) Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;

(d) Any person who transports the hazardous substance and selects the disposal site; and

(e) Any person who, by any act or omission, caused or contributed to the discharge or contamination.

401.7-9. *Exemptions.* The following persons are not “responsible parties” under this law:

(a) Any person discharging in accordance with a permit or program approved under federal or Tribal law.

(b) Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) Any person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (1) An act of nature;
- (2) An act of war; or
- (3) An act or omission of a third party, including but not limited to a trespasser, other than:

(A) An employee or agent of the person asserting the defense; or

(B) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) Any person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

- (1) To establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) Any person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

- (1) the person did not cause the contamination on the property;
- (2) the person establishes that all disposal of hazardous substances occurred before the person acquired the property;
- (3) the person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and
- (4) the person is not affiliated with a party liable for any contamination.

401.7-10. Where there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

401.8. Remedial Actions

401.8-1. A responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

401.8-2. If, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

401.8-3. The Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

- (a) the replacement and/or removal of injured plant and animal life or contaminated soil.
- (b) the treatment of contaminated soils and/or surface and/or groundwater.
- (c) adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.
- (d) the replacement or repair of faulty equipment.

(e) other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

401.8-4. Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

401.8-5. In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

401.8-6. Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

401.9. Case Closure or No Further Action

401.9-1. The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

401.9-2. Sampling shall be conducted at the completion of the remedial action when:

(a) The hazardous substance discharge is in contact with groundwater.

(b) The amount, identity or duration of the contamination is unknown.

(c) Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

401.9-3. The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

401.9-4. If additional remedial action is required for a previously closed case, the Division:

(a) Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.

(b) May require the responsible parties to achieve compliance with the Nation's public health and environmental laws, within a time period established by the Division.

401.10. Violations, Enforcement and Appeals

401.10-1. *Compliance Orders.* If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

(a) Take remedial action to prevent or abate the discharge of a hazardous substance; and/or

(b) Allow the investigation of a site believed to be contaminated or under threat of contamination.

401.10-2. *Penalty Schedule.* The Environmental Resource Board is delegated rulemaking authority to adopt a penalty schedule, upon recommendation of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a penalty in accordance with the fine schedule. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by the Division at the Owner's expense.

(b) Any person who is a lessee of the Nation who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Division of Land Management to consider potential lease violations.

401.10-3. *Contested Action Hearings.* All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-09-12-12-B

Amended – BC-02-25-15-C

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Title 4. Environment and Natural Resources – Chapter 409**WATER RESOURCES ~~ORDINANCE~~****Kaʔnekalunyuhsé Olihwaʔke***the matters of the different kinds of waters*

409.1. Policy and Purpose
 409.2. Authority
 409.3. Definitions

409.4. Powers and Duties
 409.5. Review
 409.6. Enforcement; Reporting

409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department (“Department”) shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this ~~Ordinance~~law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this ~~Ordinance~~law and all rules and orders promulgated under this ~~Ordinance~~law shall be liberally construed in favor of the policy objectives set forth in this ~~Ordinance~~law.

409.1-3. The Oneida Environmental Resource Board (“Board”) shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this ~~Ordinance~~. ~~The Board shall serve as the initial hearing body in all matters arising under the terms of this Ordinance or any regulations adopted pursuant to its delegations of authority.~~law.

409.2. ~~Authority~~

~~409.2-1. This Ordinance is adopted pursuant to Article IV, Section 1 (f), and Article IV, Section 2 of the Constitution of the Oneida Tribe of Indians of Wisconsin, the Federal Water Pollution Control Act, 33 USC 1251 et. seq., and the inherent authority of the Oneida Nation to regulate matters affecting the political integrity, economic security, or the health and welfare of the Oneida Nation.~~

409.2-2. Adoption, Amendment, and Repeal.

~~(a) 409.2-1. This Ordinance may be~~law was adopted by the [Oneida Business Committee or ~~the Oneida General Tribal Council~~]by resolution BC-5-08-96-B.

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~~409.2-2.(b) This Ordinance law may be amended pursuant to the procedures set forth in the Oneida Administrative Procedures Act by the or repealed by the [Oneida Business Committee and/or the Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.~~

~~(c) 409.2-3. Should a provision of this Ordinance law or the application thereof to any person or circumstance circumstances be held to be as invalid, such invalidity shall not affect any other provisions of this law which are considered to have legal force without the invalid portions.~~

~~409.2-4. In the event of a conflict between a provision of this Ordinance law and a provision of another law, the remainder provisions of which this law shall continue in full force and effect control.~~

~~(d) All other Oneida laws, policies, regulations, resolutions, ordinances, and other similar actions which are inconsistent with the Ordinance are hereby repealed unless specifically reenacted after the passage of this Ordinance. Where related laws purport to regulate the same activity, the more stringent shall control.~~

~~409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.~~

409.3. Definitions

409.3-1.

(a) “Board” shall mean the Oneida Environmental Resource Board.

(b) “Department” shall mean the Oneida Environmental Department.

(c) “Environmental Pollution” shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.

(d) “Garbage” means discarded materials resulting from the handling, processing, storage and consumption of food.

(e) “Hazardous Substance” shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.

(f) “Industrial Waste” shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(g) “Nonpoint Source” means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.

(h) “Other Waste” shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(i) “Person” means an individual, owner, operator, corporation chartered under federal,

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state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.

(j) “Point Source” means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. “Point Source” specifically includes any discernible, confined and discrete conveyance of storm water.

(k) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.

(l) “Pollution” means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish, bird, animal or plant life. The term “Pollution” shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

(m) “Refuse” means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(n) “Reservation” shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.

(o) “Solid Waste” shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.

(p) “State” shall mean the State of Wisconsin.

(q) “Storm Water” means any discharge, whether discrete or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.

(r) ~~“Tribe” or “Nation”~~ shall mean the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

(s) “Water Supply” means the sources and their surroundings from which water is supplied for drinking and domestic purposes.

(t) “Waters of the Reservation” means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. “Waters of the Reservation” includes wetlands, as that term is defined in Section 409.3-21, below.

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(u) “Wetlands” means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. “Normal circumstances” refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

(a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the public interest, which includes the protection of:

- (1) the public health and welfare;¹
- (2) the present and prospective future use of such waters for public and private water supplies;²
- (3) the propagation of fish, aquatic life and wildlife;³
- (4) domestic and recreational purposes;⁴ and
- (5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

- (1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).
- (2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.
- (3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

- (1) Establish numeric values based on:
 - (A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System;⁵
 - and
 - (B) Other scientifically defensible methods.

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(2) Establish narrative criteria or criteria based upon biomonitoring methods and/or hydrologic or morphologic assessments where numerical criteria cannot be established, or to supplement numerical criteria.

409.4-3. The Department shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the Federal Water Pollution Control Act, 33 USC § 1341.

409.4-4. The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties: by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.

409.4-5. Special/Emergency Orders

(a) The Department may issue special orders directing particular persons to secure such operating results toward the control of pollution of the waters of the Reservation as the Department prescribes, within a specified time. Pending efforts to comply with any order, the Department may permit continuance of operations on such conditions as it prescribes. If any person cannot comply with an order within the time specified, the person may, before the date set in the order, petition the Department to modify the order. The Department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Department shall forthwith commence an action to enforce compliance with said order.

(b) The Department may issue temporary emergency orders without prior public hearing when the Department determines that the protection of the waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Department determines. As soon as is practicable, the Department shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 409.4-5(a).

409.4-6. The Department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues.

409.4-7. The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.

409.4-8. The Department may order or cause the abatement of any nuisance affecting the waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed: by seeking a judgment for money from the Oneida Judiciary. The Department shall have all the necessary powers needed to carry out this paragraph including

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powers granted by the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this ~~Ordinance~~law in the following manner:

(a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filled within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

409.6. Enforcement; Reporting; Penalties

409.6-1.

(a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the

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waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.

(b) The Department may establish minimum effluent volumes for which reports are required under this Section.

(c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$_____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.

(d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

~~(e) The Department is authorized to request hearings before the Board relating to any aspect of the administration of the system established under Section 409.6-1, and, in connection therewith, may compel the attendance of witnesses and the production of evidence.~~

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this Ordinance~~law~~, and all rules and orders issued by the Department.

409.6-4. Penalties. Any person who violates this Ordinance~~law~~, or any rule promulgated or any regular, special or emergency order issued under this Ordinance~~law~~, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense. ~~While the order is suspended, stayed or enjoined, this penalty will not accrue.~~

~~409.6-5. Oneida Environmental Fund established.~~ Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing

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date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. ~~The Oneida Environmental Fund is hereby established.~~ Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. Any and all monies collected pursuant to this ~~Ordinance~~law shall be deposited in the Oneida Environmental Fund. This fund shall be used by the ~~Tribe~~Nation to defray the expense of administering this ~~Ordinance~~law, and to fund pilot projects and provide pollution control and prevention grants to persons at the discretion of the Department, and subject to the availability of funds.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

Adopted - BC-5-08-96-B
Corrected-2012-10-03

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Title 4. Environment and Natural Resources – Chapter 409**WATER RESOURCES****Kaʔnekalunyuhsé Olihwaʔke***the matters of the different kinds of waters*

409.1. Policy and Purpose
 409.2. Authority
 409.3. Definitions

409.4. Powers and Duties
 409.5. Review
 409.6. Enforcement; Reporting

409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department (“Department”) shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this law and all rules and orders promulgated under this law shall be liberally construed in favor of the policy objectives set forth in this law.

409.1-3. The Oneida Environmental Resource Board (“Board”) shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this law.

409.2. Adoption, Amendment and Repeal

409.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-5-08-96-B.

409.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

409.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

409.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

409.3. Definitions

409.3-1.

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- (a) “Board” shall mean the Oneida Environmental Resource Board.
- (b) “Department” shall mean the Oneida Environmental Department.
- (c) “Environmental Pollution” shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.
- (d) “Garbage” means discarded materials resulting from the handling, processing, storage and consumption of food.
- (e) “Hazardous Substance” shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.
- (f) “Industrial Waste” shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (g) “Nonpoint Source” means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.
- (h) “Other Waste” shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.
- (i) “Person” means an individual, owner, operator, corporation chartered under federal, state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.
- (j) “Point Source” means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. “Point Source” specifically includes any discernible, confined and discrete conveyance of storm water.
- (k) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.
- (l) “Pollution” means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish,

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bird, animal or plant life. The term “Pollution” shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

(m) “Refuse” means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(n) “Reservation” shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.

(o) “Solid Waste” shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.

(p) “State” shall mean the State of Wisconsin.

(q) “Storm Water” means any discharge, whether discreet or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.

(r) “Nation” shall mean the Oneida Nation.

(s) “Water Supply” means the sources and their surroundings from which water is supplied for drinking and domestic purposes.

(t) “Waters of the Reservation” means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. “Waters of the Reservation” includes wetlands, as that term is defined in Section 409.3-21, below.

(u) “Wetlands” means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. “Normal circumstances” refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

(a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the

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public interest, which includes the protection of:

- (1) the public health and welfare;
- (2) the present and prospective future use of such waters for public and private water supplies;
- (3) the propagation of fish, aquatic life and wildlife;
- (4) domestic and recreational purposes; and
- (5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

- (1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).
- (2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.
- (3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

- (1) Establish numeric values based on:
 - (A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System; and
 - (B) Other scientifically defensible methods.
- (2) Establish narrative criteria or criteria based upon biomonitoring methods and/or hydrologic or morphologic assessments where numerical criteria cannot be established, or to supplement numerical criteria.

409.4-3. The Department shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the Federal Water Pollution Control Act, 33 USC § 1341.

409.4-4. The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.

409.4-5. Special/Emergency Orders

- (a) The Department may issue special orders directing particular persons to secure such operating results toward the control of pollution of the waters of the Reservation as the Department prescribes, within a specified time. Pending efforts to comply with any order, the Department may permit continuance of operations on such conditions as it prescribes. If any person cannot comply with an order within the time specified, the person may, before the date set in the order, petition the Department to modify the order. The

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Department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Department shall forthwith commence an action to enforce compliance with said order.

(b) The Department may issue temporary emergency orders without prior public hearing when the Department determines that the protection of the waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Department determines. As soon as is practicable, the Department shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 409.4-5(a).

409.4-6. The Department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues.

409.4-7. The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.

409.4-8. The Department may order or cause the abatement of any nuisance affecting the waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed by seeking a judgment for money from the Oneida Judiciary. The Department shall have all the necessary powers needed to carry out this paragraph including powers granted by the Constitution of the Oneida Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed

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projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this law in the following manner:

(a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filled within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

409.6. Enforcement; Reporting; Penalties

409.6-1.

(a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.

(b) The Department may establish minimum effluent volumes for which reports are required under this Section.

(c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$_____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.

(d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the

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Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department:

409.6-4. Penalties. Any person who violates this law, or any rule promulgated or any regular, special or emergency order issued under this law, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense.

406.6-5. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

Adopted - BC-5-08-96-B
Corrected-2012-10-03

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Title 4. Environment and Natural Resources—Chapter 404**WELL ABANDONMENT LAW****Tsi? Kahne·kóte Kayanláhsla***our laws of the wells*

404.1. Purpose and Policy

404.2. Adoption, Amendment, Repeal

404.3. Definitions

404.4. Abandonment Required

404.5. Well Operation Permit

404.6. Abandonment Procedures

404.7. Penalties

404.8. Conflict with Federal

404.1. Purpose and Policy

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Tribe of Indians Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

404.2. Adoption, Amendment, Repeal

404.2-1. This law ~~may be~~ was adopted by the [Oneida Business Committee or ~~the~~ Oneida General Tribal Council] by resolution BC-8-31-94-A and effective ten (10) working days after date of adoption, amended by resolution.

404.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Oneida Administrative Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.~~

404.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

~~404.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy.~~

~~404.2-5. This law shall apply to all Oneida Tribal entities, the Oneida Tribe, members of the Oneida Tribe of Indians of Wisconsin who own land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians, residents and all entities within the Oneida Utility District and is adopted and implemented by authority of the Oneida Tribe of Indians of Wisconsin Constitution.~~

404.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

404.3. Definitions

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined within this section.

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47 | 404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

48 | (a) “Municipal water system” means a system for the provision to the public of piped
 49 | water for human consumption when such system has at least 15 service connections or
 50 | regularly serves at least 25 year-round residents owned or operated by a city, village,
 51 | county, town, town sanitary district or public institution, or a privately owned water
 52 | utility serving any of the above.

53 | (b) “Noncomplying” means a well or a pump installation which does not meet the
 54 | provisions of NR 112, Wis. Admin. Code.

55 | (c) “Pump installation” means the pump and related equipment used for withdrawing
 56 | water from a well including the discharge piping, the underground connections, pitless
 57 | adapters, pressure tanks, pits, sampling faucets and well seals or caps.

58 | (d) “Unsafe” means a well or pump installation which produces water which is
 59 | bacteriologically contaminated or contaminated with substances exceeding the standards
 60 | of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been
 61 | issued.

62 | (e) “Unused” means a well or pump installation which has not been in use for three (3)
 63 | months prior to the date of the adoption of this Law or has not had a functional pumping
 64 | system for three consecutive months.

65 | (f) “Well” means an excavation or opening into the ground made by digging, boring,
 66 | drilling, driving, or other methods for the purpose of obtaining groundwater for
 67 | consumption or other use.

68 | (g) “Well Abandonment” means the filling and sealing of a well according to the
 69 | provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin.
 70 | Code.

72 | **404.4. Abandonment Required**

73 | 404.4-1. All wells located on premises served by a municipal water system or, regardless of
 74 | location, are unused or of noncomplying construction, shall be abandoned in accordance with the
 75 | terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been
 76 | obtained from the Oneida Environmental Health ~~Program~~ and Safety Division within three (3)
 77 | months of adoption of this law, prior to opening a well after adoption of this law, or a renewal
 78 | permit was granted within three months of expiration of prior permits.

80 | **404.5. Well Operation Permit**

81 | 404.5-1. The Oneida Environmental Health ~~Program~~ and Safety Division may grant a yearly
 82 | well operation permit to a private well owner to operate a well for a period not to exceed five (5)
 83 | years, providing the conditions of this section are met. An owner may request renewal of a well
 84 | operation permit by submitting information verifying that the conditions of this section are met.

85 | 404.5-2. The following requirements must be met prior to granting a permit

86 | (a) A yearly water quality test is performed at the owner’s expense.

87 | (b) The Oneida Environmental Health ~~Program~~ and Safety Division or its agent, may
 88 | conduct inspections or have water quality tests conducted to obtain or verify information
 89 | necessary for consideration of a permit application, on an annual basis for reverification,
 90 | or upon request for permit renewal.

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(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health ~~Program~~ and Safety Division.

404.5-3. ~~—~~ The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this condition may be made for unsafe well, unless the Oneida Environmental Health ~~Program~~ and Safety Division provides the appropriate form for the continued use of the well; and

(c) There are no cross-connections between the well and pump installation and the municipal water system; and

(d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

404.6. ~~—~~ Abandonment Procedures

404.6-1. ~~—~~ All wells abandoned under the jurisdiction of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2. ~~—~~ The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health ~~Program~~ and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health ~~Program~~ and Safety Division, or its designated agent.

404.6-3. ~~—~~ A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health ~~Program~~ and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health ~~Program~~ and Safety Division.

404.6-4. ~~—~~ All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

404.7. ~~—~~ Penalties.

404.7-1. ~~—~~ Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less ~~that~~ than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.

404.7-2. ~~—~~ Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida ~~Tribe~~ Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. ~~The Oneida Environmental Health Program is authorized to bring all civil forfeiture hearings before the Oneida Environmental resource Board as the Original Hearing Body. Provided that notice and hearing procedures are conducted as directed by the Oneida Administrative Procedures Act.~~

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~~404.7-4. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.~~

~~404.7-5. Appeal from any final, written, judgment shall be made within five (5) working days of notice and may be made by either party.~~

~~404.7-6. No forfeitures accumulate after a civil hearing is begun by filing a request for forfeiture with the Environmental Resource Board.~~

~~404.7-7. Forfeiture collected under this law are to forwarded to the Accounts Receivable Office for placement in the General Tribal Funds.~~

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

404.8. Conflict with Federal.

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida ~~Tribe of Indians~~Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or department directly affected.

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Title 4. Environment and Natural Resources—Chapter 404**WELL ABANDONMENT****Tsi? Kahne·kóte Kayanláhsla***our laws of the wells*

404.1. Purpose and Policy

404.2. Adoption, Amendment, Repeal

404.3. Definitions

404.4. Abandonment Required

404.5. Well Operation Permit

404.6. Abandonment Procedures

404.7. Penalties

404.8. Conflict with Federal

404.1. Purpose and Policy

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

404.2. Adoption, Amendment, Repeal

404.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-8-31-94-A and amended by resolution _____.

404.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

404.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

404.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

404.3. Definitions

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined within this section.

404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

(a) “Municipal water system” means a system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town, town sanitary district or public institution, or a privately owned water utility serving any of the above.

(b) “Noncomplying” means a well or a pump installation which does not meet the provisions of NR 112, Wis. Admin. Code.

(c) “Pump installation” means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless

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adapters, pressure tanks, pits, sampling faucets and well seals or caps.

(d) “Unsafe” means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances exceeding the standards of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued.

(e) “Unused” means a well or pump installation which has not been in use for three (3) months prior to the date of the adoption of this Law or has not had a functional pumping system for three consecutive months.

(f) “Well” means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.

(g) “Well Abandonment” means the filling and sealing of a well according to the provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin. Code.

404.4. Abandonment Required

404.4-1. All wells located on premises served by a municipal water system or, regardless of location, are unused or of noncomplying construction, shall be abandoned in accordance with the terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been obtained from the Oneida Environmental Health and Safety Division within three (3) months of adoption of this law, prior to opening a well after adoption of this law, or a renewal permit was granted within three months of expiration of prior permits.

404.5. Well Operation Permit

404.5-1. The Oneida Environmental Health and Safety Division may grant a yearly well operation permit to a private well owner to operate a well for a period not to exceed five (5) years, providing the conditions of this section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met.

404.5-2. The following requirements must be met prior to granting a permit

(a) A yearly water quality test is performed at the owner’s expense.

(b) The Oneida Environmental Health and Safety Division or its agent, may conduct inspections or have water quality tests conducted to obtain or verify information necessary for consideration of a permit application, on an annual basis for reverification, or upon request for permit renewal.

(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health and Safety Division.

404.5-3. The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this condition may be made for unsafe well, unless the Oneida Environmental Health and Safety Division provides the appropriate form for the continued use of the well; and

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(c) There are no cross-connections between the well and pump installation and the municipal water system; and

(d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

404.6. Abandonment Procedures

404.6-1. All wells abandoned under the jurisdiction of the Oneida Nation shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2. The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health and Safety Division, or its designated agent.

404.6-3. A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health and Safety Division.

404.6-4. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

404.7. Penalties

404.7-1. Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.

404.7-2. Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of

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one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

404.8. Conflict with Federal.

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or department directly affected.

Adopted - BC-8-31-94-A

Candice E. Skenandore

From: Jennifer A. Webster
Sent: Friday, May 05, 2017 2:22 PM
To: Candice E. Skenandore
Subject: RE: E-Poll for: Domestic Animals Public Meeting Packet

Approve,
 Jenny

From: Candice E. Skenandore
Sent: Friday, May 05, 2017 11:23 AM
To: Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill
Cc: Krystal John; Jennifer A. Falck; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen
Subject: Domestic Animals Public Meeting Packet Epoll

Good Morning,

At the LOC meeting on Wednesday, May 3 the LOC directed that the legislative analysis be updated to reflect the revisions to the draft Domestic Animals Amendments which transfers hearing authority from ERB to the Judiciary. The public meeting packet has been revised (attached) and will be published accordingly once LOC approval is obtained via epoll. Also attached is the revised redline to show the changes from the public meeting draft to Draft 18 (presented to the LOC on 4/19/2017).

Please use the voting button above to approve or reject this epoll. Let me know if you have any questions.
 Have a good day,

Candice E. Skenandore
 Legislative Analyst
 Legislative Reference Office

Candice E. Skenandore

From: Ronald W. Hill
Sent: Wednesday, May 10, 2017 10:55 AM
To: Candice E. Skenandore
Subject: Approve: Domestic Animals Public Meeting Packet Epoll

Candice E. Skenandore

From: Brandon L. Yellowbird-Stevens
Sent: Wednesday, May 10, 2017 11:00 AM
To: Candice E. Skenandore
Subject: Approve: Domestic Animals Public Meeting Packet Epoll



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: May 17, 2017
RE: Certification of Per Capita Law Rule No. 1 – Distributions Rule

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Trust Enrollment Committee for the Per Capita law Rule No. 1 – Distributions Rule (“the Rule”).

If certified by the Legislative Operating Committee, the Rule Handbook would become effective on May 17, 2017.

Administrative Record

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Updated draft of the Rule;
- Summary Report;
- Memorandum containing the public comments that were received and the Oneida Trust Enrollment Committee’s response to each comment;
- Public Meeting Sign In Sheet;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Draft of the Rule considered at the public meeting;
- The redacted April 4, 2017 Rescheduled Regular Oneida Trust Enrollment Committee meeting minutes approving the first draft of the Rule; and
- The redacted April 24, 2017 regular Oneida Trust Enrollment Committee meeting minutes approving the public comments and revision to the Rule.

Procedural Requirements

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule Handbook was published in the Kalihwisaks on April 6, 2017;
- A public meeting for the Rule Handbook was held on April 21, 2017;

- The public comment period was held open until April 28, 2017;
- The Oneida Trust Enrollment Committee considered and responded to the public comments received in a memorandum dated April 21, 2017; and
- The Oneida Trust Enrollment Committee approved the Rule on April 24, 2017.

Rulemaking Authority

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Per Capita law Rule No. 1 – Distributions Rule complies with all requirements of the Administrative Rulemaking law.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: May 1, 2017
- 2) Contact Person(s): Rob Collins
 Dept: Law Office
 Phone Number: 920-869-4327 Email: rcollins@oneidanation.org
- 3) Agenda Title: LOC Certification of Distributions Rule
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The Per Capita law delegates administrative rulemaking authority to the Oneida
Trust Enrollment Committee as authorized by the Administrative Rulemaking law.
Pursuant to to section 106.7-1 of the Administrative Rulemaking law, the Committee
is submitting the Distributions Rule to be certified by the LOC.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Proposed Rule
- 2) _____
- 3) Complete Record of Rule
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Per Capita law
- 6) Please list all other departments or person(s) you have brought your concern to:
This rule has been discussed with the Division of Land Management (Probate Division)
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Pursuant to BC Resolution 02-22-17-D, the rule must be in effect by June 25, 2017.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:



Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

Trust Enrollment DepartmentPO Box 365, Oneida WI 54155
(920) 869-6200 * 1-800-571-9902

Fax: (920) 869-2995

Enrollments@oneidation.org

<https://oneida-nsn.gov/resources/enrollments/>**MEMORANDUM**

To: Legislative Operating Committee

From: Susan White, Trust Enrollment Department Director

Date: May 1, 2017

Subject: Distributions Rule – Request for LOC Certification

Background

On February 22, 2017, the Oneida Business Committee adopted amendments to the Per Capita law. Part of those amendments designated the Oneida Trust Enrollment Committee as the authorized agency to promulgate rules pursuant to the Administrative Rulemaking law. The Oneida Trust Enrollment Committee is proposing a "Distributions Rule" to the Per Capita law that:

1. Determines the valuation dates for the minors trust payment funds;
2. Addresses prior adult per capita payment distributions;
3. Determines when a guardian qualifies for distribution from an established trust; and
4. Addresses a decedent's trust account balance distribution.

Below is the timeline indicating the proper steps the Oneida Trust Enrollment Committee has taken in order to adopt this rule. Furthermore, attached to this memo is all supporting documents required for LOC Certification which will be listed at the end of this memorandum.

The Oneida Trust Enrollment Committee has followed the Administrative Rulemaking process and respectfully requests the Legislative Operating Committee to certify the proposed Distribution Rule.

Timeline

February 22, 2017: BC Resolution 02-22-17-D adopts amendments to Per Capita law designating the Oneida Trust Enrollment Committee as the authorized agency for promulgating certain rules.

March 10, 2017: Attorney Robert Collins requests Division of Land Management to review the proposed Distributions Rule for any financial impact since the rule references the probate process.

March 23, 2017: Legislative Reference Office sends Trust Enrollment Department a Statement of Effect.

March 29, 2017: Financial Analysis finalized.

April 4, 2017: Oneida Trust Enrollment Committee reviews proposed Distribution Rule at their regular monthly meeting.

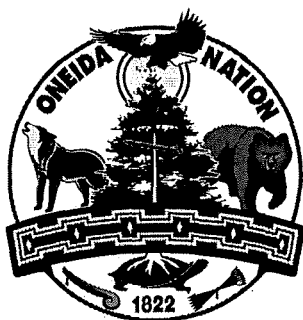
- April 6, 2017: Oneida Register and *Kalihwisaks* published Public Meeting notice of Distribution Rule to be held on April 21, 2017. Notification of Public Meeting also posted on Trust Enrollment Department's Facebook page
- April 21, 2017: Public Meeting held for Distributions Rule.
- April 24, 2017: Distribution Rule revised based off of recommendation at the public meeting and was submitted to Oneida Trust Enrollment Committee for review at their regular monthly Meeting.
- April 28, 2017: Close of public comment period. There were no additional public comments submitted; therefore, there was no need for further Oneida Trust Enrollment Committee action.

Attachments

Included with this memo, please find the following:

- Updated draft of the rule.
- Summary Report.
- Statement of Effect.
- Financial Analysis.
- Memorandum containing the public comments that were received and the Committee's response to each comment.
- Public meeting notice.
- Public meeting sign-in sheet.
- Draft of the rule considered at the public meeting.
- The redacted April 4, 2017 Rescheduled Regular OTEC Meeting Minutes approving the first draft of the Distributions Rule.
- The redacted April 24, 2017 Regular OTEC Meeting Minutes approving the public comments and revision to the Distributions Rule.

I am requesting that the effective date of the rule be the date the Legislative Operating Committee certifies the rule pursuant to section 106.7-2(a) of the Administrative Rulemaking law. YawΛ'kó.



Title 1. Government and Finances – Chapter 123 PER CAPITA Rule #1 –Distributions Rule

- 1.1 Purpose and Delegation
- 1.2 Adoption and Authority
- 1.3 Definitions
- 1.4 Valuation
- 1.5 Distribution of Prior Adult Per Capita Payments
- 1.6 Distribution to a Guardian from a Trust Account
- 1.7 Distribution of a Decedent's Trust Account
- 1.8 Per Capita Actions

1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create processes by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee, determines the valuation dates for the minors trust payment funds, addresses prior adult per capita payment distributions, determines when a guardian qualifies for distribution from an established trust, and addresses a decedent's trust account balance distribution.

1.1-2. *Delegation.* The Per Capita law delegated the Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was adopted by the Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies, or other requirements relating to the Per Capita law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Approved Letter of Authority" means a certified copy of court documentation evidencing appointment of a legal guardian of estate for a legally incompetent adult such as Letters of Guardianship or other court orders.

(b) "Death Certificate" means a document, which for the purpose of this rule shall be either an original or certified copy, documenting the death of an individual.

(c) "Department" means the Oneida Trust Enrollment Department.

(d) "Guardian" means a person appointed by a court of competent jurisdiction to manage the financial affairs of a Tribal member who a court has determined to be incompetent.

(e) "Interested Party" means a person(s) who may potentially be considered a beneficiary of a deceased Tribal member's remaining trust fund account.

(f) "Legally Incompetent Adult" means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law(s).

(g) "Judiciary" means the Nation's judicial system, which includes the Family Court, Trial Court, and/or Appellate Court.

(h) "Nation" means the Oneida Nation.

(i) "Personal Representative" means a person to whom authority to administer a decedent's estate has been granted by the Division of Land Management, the Judiciary, or another court of competent jurisdiction.

(j) "Tribal Member" means an individual who is an enrolled member of the Nation.

(k) "Trust Account" means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation's revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.

(l) "Trust Enrollment Committee" or "Committee" means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation's enrollment records.

1.4. Valuation

1.4-1. The valuation of the minors trust portfolios shall be determined at least quarterly by the Committee.

1.4-2. The Committee may delegate valuation reporting responsibilities to duly selected vendors and may share data determined by the Committee to be critical to the completion of the valuation report with the vendor.

1.5. Distribution of Prior Adult Per Capita Payments

1.5-1. The Nation shall distribute all properly submitted and eligible requests for a prior unclaimed adult per capita payment pursuant to section 123.5-2(e) of the Per Capita law during the next distribution date as approved by the Committee or established by law.

1.5-2. The Nation shall distribute all properly submitted and eligible requests to reissue a prior distribution for which a Tribal member claimed, but did not redeem, within a reasonable amount of time. Upon notice from the Oneida Accounting Department of a rejected direct deposit, the Nation may reissue the check without further action from the Tribal member.

1.6. Distribution to a Guardian from a Trust Account

1.6-1. Tribal members who have been declared legally incompetent and whose guardian has provided the Department with an Approved Letter of Authority, shall have their per capita shares placed into a trust account pursuant to the Per Capita law.

1.6-2. The guardian may file a petition with the Department to request distributions from a legally incompetent adult's trust account for that individual's health, welfare, and/or educational expenses.

(a) The petition may include a request for regular distributions necessary for the care of the legally incompetent adult.

(b) Regular distributions may be authorized on a monthly, quarterly, semi-annual, or other schedule.

1.6-3. The petition filed by the guardian of a legally incompetent adult, which shall be made available upon request by the Department, shall contain, at a minimum, the following information:

(a) Name, address, date of birth, and social security number of the legally incompetent adult individual.

(b) An explanation for the request for a disbursement from the trust account (i.e. proposed use of the funds).

(c) The amount of money requested and any instructions for making the disbursement (e.g. to whom the money will be paid).

(d) If the petition requests a regular distribution it should state the justification that funds need to be disbursed on a regular basis and should state the requested method and frequency of payment.

1.6-4. The Trust Enrollment Department Director or his/her designee shall either grant or deny the request within ten (10) business days of the date the petition was filed. If the request is denied, the Department shall send a written copy of the decision to the guardian by first class mail.

1.6-5. A guardian that is dissatisfied with the Trust Enrollment Department Director's decision may appeal to the Judiciary's Court of Appeals in accordance with any applicable rules and procedures.

1.7. Distribution of a Decedent's Trust Account

1.7-1. Upon receipt of an obituary or death certificate to validate a Tribal member's death:

(a) The Department will change the membership record to deceased.

(b) The Department will perform a search of the trust account records to identify if the deceased has a trust account with a remaining balance. The findings of the search shall be documented on the member record.

(1) If the deceased Tribal member is found to have a trust account with a remaining balance, a documented accounting of the funds shall be recorded and the Department will continue processing in accordance with section 1.7-2 of this rule.

(2) If the deceased Tribal member is found to have a trust account with no remaining balance or no trust account, a documented accounting shall be maintained for the record with no further action under this rule.

1.7-2. Any notices pursuant to this section of the rule shall be sent to the last known address on file by first class mail.

(a) When there is a beneficiary designated, refer to section 123.5-3(b)(1) of the Per Capita law.

(b) Within thirty (30) calendar days of receiving an obituary or death certificate of a Tribal member with a trust account balance for which no beneficiary has been named, the Department shall send notice to any known potentially interested party(s) with information about how trust account balances may be claimed. The Department shall copy the Division of Land Management's Probate Department on all notices sent to potentially interested parties.

(1) If the deceased Tribal member is eighteen (18) years of age or older, interested parties that shall receive notice include:

- (A) spouse (widow or widower);
- (B) adult children or the legal guardian/custodian of minor children (natural or legally adopted);
- (C) grandchild or grandchildren;
- (D) parent(s); and
- (E) brother(s) and/or sister(s).

(2) If the deceased Tribal member is younger than eighteen (18) years of age, interested parties that shall receive notice include:

- (A) spouse (widow or widower);
- (B) legal guardian/custodian of minor children (natural or legally adopted);
- (C) parent(s) or legal guardian/custodian;
- (D) brother(s) and/or sister(s); and
- (E) grandparent(s).

1.7-3. The Department shall process trust account disbursement under the following circumstances:

(a) The decedent designated a trust account beneficiary which is on file with the Department and the Department has received the following within one (1) year from the date of the Department's notice pursuant to section 123.5-3(b)(1) of the Per Capita law:

(1) A complete and notarized Release for Deceased Trust Account form.

(b) The decedent did not designate a trust account beneficiary and the Department has received the following from an interested party or personal representative within one (1) year from the date of the Department's notice pursuant to section 1.7-2(b) of this rule:

(1) An original domiciliary letter or other legal document allowing an interested party or personal representative to sign on behalf of an estate or receive the money. The Department shall photocopy the document for recordkeeping purposes; and

(2) A complete and notarized Release for Deceased Trust Account form.

1.7-4. The Department shall liquidate any remaining trust account balance when the following has occurred:

(a) When the designated beneficiaries fail to comply with section 1.7-3(a) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

(b) When an interested party or personal representative fails to submit the items in section 1.7-3(b) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

(1) The Department may grant an extension to an interested party or personal representative upon a showing of good cause submitted prior to the expiration of the one (1) year time limit.

1.8 Per Capita Actions

1.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this rule.

1.8-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this rule.

173 1.8-3. In regards to taking actions authorized under this law, complaints filed with the Oneida
174 Judiciary shall name the Trust Enrollment Department.

175
176 *End.*

177
178 _____
Original effective date:

Summary Report for Distributions Rule

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Distributions Rule

Name of law being interpreted: Per Capita law

Rule Number: 1

Other Laws or Rules that may be affected: Real Property law (in regard to the probate process)

Brief Summary of the proposed rule: The purpose of this rule is to create processes by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee, determines the valuation dates for the minors trust payment funds, addresses prior adult per capita payment distributions, determines when a guardian qualifies for distribution from an established trust, and addresses a decedent's trust account balance distribution.

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.

Note: In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
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Statement of Effect

Per Capita Rule No.1 – Distributions Rule

Summary

Per Capita Rule No. 1 – Distributions Rule creates a process by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee, can do the following:

- Determine the valuation dates for the minors trust payment funds;
- Address prior adult per capita payment distributions;
- Determine when a guardian qualifies for distribution from an established trust; and
- Address a decedent's trust account balance distribution.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Per Capita law ("the Law") delegates administrative rulemaking authority to the Trust Enrollment Committee as authorized by the Administrative Rulemaking law.

The Law states that the Trust Enrollment Committee is responsible for the protection and preservation of per capita payment fund for beneficiaries, and that as part of the responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Law delegates rulemaking authority to the Trust Enrollment Committee to develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. [see *Per Capita law section 123.6-1(a)(1)*]. The Law also allows the Trust Enrollment Department to delegate such reporting responsibilities to duly selected vendors. Per Capita Rule No. 1 – Distributions Rule ("the Rule") discusses the frequency of the valuation of minors trust portfolios and the delegation of valuation reporting responsibility to duly selected vendors. [see *Per Capita Rule No. 1 section 1.4*].

The Law grants the Trust Enrollment Committee rulemaking authority to establish rules regarding distribution timelines that the Trust Enrollment Department must follow when processing prior per capita payments requested by eligible adults. [see *Per Capita law section 123.5-2(e)(1)(a)*]. The Rule provides for how all properly submitted and eligible requests for a prior adult per capita payment will be distributed. [see *Per Capita Rule No. 1 section 1.5*].

The Law grants the Trust Enrollment Committee rulemaking authority to develop rule for determining when a guardian qualifies for distribution from an established trust account. [see *Per Capita law section 123.6-2(a)*]. The Rule provides for the distribution to a guardian from a trust account. [see *Per Capita Rule No. 1 section 1.6*].

The Law grants the Trust Enrollment Committee rulemaking authority to establish rules defining potentially interested parties in the event there is no signed beneficiary designation form on

record, as well as notice provisions that put those potentially interested parties that the Nation has a probate process and the potential consequences of failure to comply with the probate process. [see *Per Capita law section 123.5-3(b)(2)*]. The Rule provides for distribution of a decedent's trust account. [see *Per Capita Rule No. 1 section 1.7*].

Conclusion

There are no legal bars to adopting Per Capita Rule No. 1 – Distributions Rule.

Financial Analysis for Distributions Rule (Trust Enrollment Department)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget.	\$0
Personnel	Existing staff would incur additional duties.	\$0
Office	No office changes, but staff would implement required forms.	\$0
Documentation Costs	Mailing costs to correspond with designated beneficiaries and interested parties.	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	One week.	\$0
Other, please explain	N/A	\$0
Total Cost (Annual)		\$0

The Division of Land Management did not identify any costs associated with this rule as it pertains to the probate process.

Jo Anne House, PhD | Chief Counsel
James R. Bittorf | Deputy Chief Counsel

Patricia M. Stevens Garvey
Kelly M. McAndrews
Michelle L. Gordon
Krystal L. John
Robert J. Collins, II

TO: Legislative Operating Committee (LOC)
FROM: Robert J. Collins II, Oneida Law Office *RJC*
DATE: April 21, 2017
RE: Distributions Rule: Public Meeting Comment Review

On April 21, 2017, a public meeting was held regarding the proposed Distributions Rule. This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

Comment 1.

*Jo Anne House, PhD
James R. Bittorf*
Rob Collins – Oral Comment: I'm making two comments regarding the proposed rule based on conversations that I have had with Oneida entities. Comment number one pertains to Rule number 1.5. There was some discussion with me regarding rejected direct deposits and whether or not tribal members should have to fill out a separate form in order to get those distributions re-issued. I'm proposing that rule 1.5 be expanded to address the situation where there's a rejected direct deposit. The second comment that I have pertains to rule 1.7-4(b). This comment came about after having discussions with the probate division. There was some concern regarding probate matters that occur in jurisdictions outside the Oneida Judiciary and that if matters are contested, it could take longer than one year for the applicable paperwork to be issued by the court. I'm suggesting we look at giving the Trust Enrollment Department the discretion to grant extensions if requested by an individual prior to the expiration of the one year period.

Oneida Trust Enrollment Committee Response: To avoid having Tribal members fill out separate paperwork whenever a direct deposit is rejected, Rule 1.5 was amended so that the reissued check could be distributed without further action from the Tribal member.

Rule 1.7-4(b) was also revised to allow for an interested party or personal representative to request an extension to the one (1) year time limit by submitting a request to the Trust Enrollment Department. Giving the Trust Enrollment Department the discretion to grant an extension could prevent the liquidation of any remaining trust account balance in a case where the probate process has begun but has been delayed for a variety of reasons (e.g. court calendar, contested issues, etc.).

*Jo Anne House, PhD
James R. Bittorf
Patricia M. Stevens Garvey
Kelly M. McAndrews
Michelle L. Gordon
Krystal L. John
Robert J. Collins, II*

Public Meeting Sign In Sheet

Per Capita Law - Distributions Rule

April 21, 2017

	Name	Phone or Email
1	Brent Truttmann	920-915-1999
2	Susan White	4 3935
3	Rob Collins	4663
4	P.D.	3931
5		
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9		

www.kalihwisaks.com

Local

April 6, 2017 • A'hsa Niwasa Wisk 35

Letters

Thank you
Dreamcatcher Fund

Dear Dreamcatcher
Fund,

Thank you for your generous contribution to my sport. I truly appreciate it!

Sincerely,
Riley Aguirre

E-mail your
letters to:
**dwalschi@
oneidation.
org**

Letters Policy

Letters must be limited to 250 words. All letters are subject to editing and must have your signature, address and phone number for confirmation. Confirmation of letters will be needed before publication. Kalihwisaks has the right to refuse publication of submitted letters.

Effective January 1, 2001 per Kalihwisaks Policies & Procedures, Section I (c)(4), "Individuals will not be allowed to submit more than eight (8) letters per year regardless of top-

ics." For more information on Kalihwisaks Policies & Procedures, please contact (920) 496-5636

Guest articles and editorials that appear in the Kalihwisaks are not necessarily the views or opinions of the Kalihwisaks staff or the Oneida Nation of Wisconsin.

Although we require a signed submission for letters, you can e-mail us now – and send the hard copy through the mail – to ensure we get your submission by the deadline.



Forklift Driver Safety Course



Would you like to become certified in forklift driving?
There is still time to sign up for a one-day safety course being held at NWTCL

Date: Friday, April 28, 2017

Time: 4:00 PM—11:59 PM

Where: NWTCL

To register, please contact:

Oneida Workforce Development Department

909 Packerland Drive (920) 490-3610

Green Bay, WI



Workforce Development
Footprints to Opportunities



NOTICE OF

PUBLIC MEETING

TO BE HELD

April 21, 2017 at 10:00 a.m.

IN THE

Business Committee Conference Room

In accordance with the Administrative Rulemaking Law, the Trust Enrollment Committee is hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

TOPIC: Distributions Rule

This is a proposal to adopt a rule which would create a process by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee:

- ♦ Determines the valuation dates for per capita payment funds;
- ♦ Distributes prior adult per capita payments;
- ♦ Determines when a guardian qualifies for distribution from an established trust; and
- ♦ Addresses a decedent's trust account balance.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD OPEN UNTIL APRIL 28, 2017.

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Trust Enrollment Committee by U.S. mail, interoffice mail, e-mail or fax.

Oneida Trust Enrollment Committee

PO Box 365

Oneida, WI 54155

Enrollments@oneidation.org

Telephone: (920) 869-6200

Fax: (920) 869-2995

Draft #1 – For Public Meeting
03/10/2017



Title 1. Government and Finances – Chapter 123

PER CAPITA

Rule #1 –Distributions Rule

- 1.1 Purpose and Delegation
- 1.2 Adoption and Authority
- 1.3 Definitions
- 1.4 Valuation
- 1.5 Distribution of Prior Adult Per Capita Payments
- 1.6 Distribution to a Guardian from a Trust Account
- 1.7 Distribution of a Decedent's Trust Account
- 1.8 Per Capita Actions

1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create processes by which the Trust Enrollment Department, with the approval of the Trust Enrollment Committee, determines the valuation dates for the minors trust payment funds, addresses prior adult per capita payment distributions, determines when a guardian qualifies for distribution from an established trust, and addresses a decedent's trust account balance distribution.

1.1-2. *Delegation.* The Per Capita law delegated the Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was adopted by the Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies, or other requirements relating to the Per Capita law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Approved Letter of Authority" means a certified copy of court documentation evidencing appointment of a legal guardian of estate for a legally incompetent adult such as Letters of Guardianship or other court orders.

(b) "Death Certificate" means a document, which for the purpose of this rule shall be either an original or certified copy, documenting the death of an individual.

(c) "Department" means the Oneida Trust Enrollment Department.

(d) "Guardian" means a person appointed by a court of competent jurisdiction to manage the financial affairs of a Tribal member who a court has determined to be incompetent.

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(e) “Interested Party” means a person(s) who may potentially be considered a beneficiary of a deceased Tribal member’s remaining trust fund account.

(f) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law(s).

(g) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court, and/or Appellate Court.

(h) “Nation” means the Oneida Nation.

(i) “Personal Representative” means a person to whom authority to administer a decedent’s estate has been granted by the Division of Land Management, the Judiciary, or another court of competent jurisdiction.

(j) “Tribal Member” means an individual who is an enrolled member of the Nation.

(k) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.

(l) “Trust Enrollment Committee” or “Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.

1.4. Valuation

1.4-1. The valuation of the minors trust portfolios shall be determined at least quarterly by the Committee.

1.4-2. The Committee may delegate valuation reporting responsibilities to duly selected vendors and may share data determined by the Committee to be critical to the completion of the valuation report with the vendor.

1.5. Distribution of Prior Adult Per Capita Payments

1.5-1. The Nation shall distribute all properly submitted and eligible requests for a prior adult per capita payment pursuant to section 123.5-2(e) of the Per Capita law during the next distribution date as approved by the Committee or established by law.

1.6. Distribution to a Guardian from a Trust Account

1.6-1. Tribal members who have been declared legally incompetent and whose guardian has provided the Department with an Approved Letter of Authority, shall have their per capita shares placed into a trust account pursuant to the Per Capita law.

1.6-2. The guardian may file a petition with the Department to request distributions from a legally incompetent adult’s trust account for that individual’s health, welfare, and/or educational expenses.

(a) The petition may include a request for regular distributions necessary for the care of the legally incompetent adult.

(b) Regular distributions may be authorized on a monthly, quarterly, semi-annual, or other schedule.

1.6-3. The petition filed by the guardian of a legally incompetent adult, which shall be made available upon request by the Department, shall contain, at a minimum, the following information:

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(a) Name, address, date of birth, and social security number of the legally incompetent adult individual.

(b) An explanation for the request for a disbursement from the trust account (i.e. proposed use of the funds).

(c) The amount of money requested and any instructions for making the disbursement (e.g. to whom the money will be paid).

(d) If the petition requests a regular distribution it should state the justification that funds need to be disbursed on a regular basis and should state the requested method and frequency of payment.

1.6-4. The Trust Enrollment Department Director or his/her designee shall either grant or deny the request within ten (10) business days of the date the petition was filed. If the request is denied, the Department shall send a written copy of the decision to the guardian by first class mail.

1.6-5. A guardian that is dissatisfied with the Trust Enrollment Department Director's decision may appeal to the Judiciary's Court of Appeals in accordance with any applicable rules and procedures.

1.7. Distribution of a Decedent's Trust Account

1.7-1. Upon receipt of an obituary or death certificate to validate a Tribal member's death:

(a) The Department will change the membership record to deceased.

(b) The Department will perform a search of the trust account records to identify if the deceased has a trust account with a remaining balance. The findings of the search shall be documented on the member record.

(1) If the deceased Tribal member is found to have a trust account with a remaining balance, a documented accounting of the funds shall be recorded and the Department will continue processing in accordance with section 1.7-2 of this rule.

(2) If the deceased Tribal member is found to have a trust account with no remaining balance or no trust account, a documented accounting shall be maintained for the record with no further action under this rule.

1.7-2. Any notices pursuant to this section of the rule shall be sent to the last known address on file by first class mail.

(a) When there is a beneficiary designated, refer to section 123.5-3(b)(1) of the Per Capita law.

(b) Within thirty (30) calendar days of receiving an obituary or death certificate of a Tribal member with a trust account balance for which no beneficiary has been named, the Department shall send notice to any known potentially interested party(s) with information about how trust account balances may be claimed. The Department shall copy the Division of Land Management's Probate Department on all notices sent to potentially interested parties.

(1) If the deceased Tribal member is eighteen (18) years of age or older, interested parties that shall receive notice include:

(A) spouse (widow or widower);

(B) adult children or the legal guardian/custodian of minor children (natural or legally adopted);

(C) grandchild or grandchildren;

(D) parent(s); and

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- (E) brother(s) and/or sister(s).
- (2) If the deceased Tribal member is younger than eighteen (18) years of age, interested parties that shall receive notice include:
- (A) spouse (widow or widower);
 - (B) legal guardian/custodian of minor children (natural or legally adopted);
 - (C) parent(s) or legal guardian/custodian;
 - (D) brother(s) and/or sister(s); and
 - (E) grandparent(s).

1.7-3. The Department shall process trust account disbursement under the following circumstances:

(a) The decedent designated a trust account beneficiary which is on file with the Department and the Department has received the following within one (1) year from the date of the Department's notice pursuant to section 123.5-3(b)(1) of the Per Capita law:

(1) A complete and notarized Release for Deceased Trust Account form.

(b) The decedent did not designate a trust account beneficiary and the Department has received the following from an interested party or personal representative within one (1) year from the date of the Department's notice pursuant to section 1.7-2(b) of this rule:

(1) An original domiciliary letter or other legal document allowing an interested party or personal representative to sign on behalf of an estate or receive the money. The Department shall photocopy the document for recordkeeping purposes; and

(2) A complete and notarized Release for Deceased Trust Account form.

1.7-4. The Department shall liquidate any remaining trust account balance when the following has occurred:

(a) When the designated beneficiaries fail to comply with section 1.7-3(a) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

(b) When an interested party or personal representative fails to submit the items in section 1.7-3(b) of this rule within one (1) year from the date of the Department's notice, the Department shall liquidate the trust account and deposit the funds in accordance with the Per Capita law.

1.8 Per Capita Actions

1.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this rule.

1.8-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this rule.

1.8-3. In regards to taking actions authorized under this law, complaints filed with the Oneida Judiciary shall name the Trust Enrollment Department.

End.

Original effective date:

Rescheduled Regular Trust Enrollment Minutes
4 April 2017
Page 2 of 5

[REDACTED]

[REDACTED]

[REDACTED]

B.

[REDACTED]

[REDACTED]

C. Per Capita Law Distributions Rule – Robert Collins

3-30-17 No update. Regular meeting rescheduled due to lack of OTEC quorum.

4-4-17 Status Update

Norbert Hill Jr. motioned to approve the 1st draft of the Distributions Rule. Seconded Elaine Skenandore-Cornelius. Motion carried unanimously.

[REDACTED]

Regular Trust Enrollment Committee Minutes
24 April 2017
Page 2 of 4

[REDACTED]

B.

[REDACTED]

C. Per Capita Law Distributions Rule – Robert Collins

3-30-17 No update. Regular meeting rescheduled due to lack of OTEC quorum. 4-4-17 Motion to approve 1st draft of Distribution Rule

24-4-17 Status Update

Loretta Metoxen motioned to approve the public comments and revisions to the Distributions Rule on the condition that no public comments are submitted by close of business April 28, 2017. Seconded Dylan Benton. Motion carried unanimously.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: May 17, 2017
RE: Certification of Hunting, Fishing and Trapping Law Rule Handbook

The Legislative Reference Office has reviewed the certification packet provided by the Environmental Resource Board and the Oneida Conservation Department for the Hunting, Fishing and Trapping law Rule Handbook (“the Rule Handbook”).

If certified by the Legislative Operating Committee, the Rule Handbook would become effective on May 25, 2017.

Administrative Record

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Final draft of the Rule Handbook;
- Memorandum from Minnie Garvey, Chairwoman of the Environmental Resource Board approving the Rule Handbook and stating that the Environmental Resource Board approved the Rule Handbook at their April 6, 2017 meeting;
- Memorandum from Shad L. Webster, Natural Resources Director of the Oneida Conservation Department approving the Rule Handbook;
- Summary Report;
- Public Meeting Notice;
- Draft of the Rule Handbook considered at the public meeting;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Public Meeting Sign In Sheet;
- Public Meeting Transcript;
- Memorandum containing the public comments that were received and a response to each comment; and
- Redline draft of Rule Handbook illustrating changes made after the public meeting.

Procedural Requirements

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule Handbook was published in the Kalihwisaks on April 6, 2017;
- A public meeting for the Rule Handbook was held on April 21, 2017;
- The public comment period was held open until April 28, 2017;
- There was one community member in attendance at the public meeting, and no written comments received during the public meeting or the public meeting comment period;
- Public comments were considered and responded to in a memorandum dated May 3, 2017; and
- The Environmental Resource Board and the Oneida Conservation Department approved the Rule Handbook.

Rulemaking Authority

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Hunting, Fishing and Trapping Rule Handbook complies with all requirements of the Administrative Rulemaking law.



MEMORANDUM

TO: Legislative Operating Committee

FROM: Krystal L. John, Staff Attorney

DATE: May 3, 2017

SUBJECT: Request for Certification of Procedural Compliance – Hunting, Fishing and Trapping Rule Handbook

The Environmental Resource Board and the Oneida Conservation Department are exercising their rulemaking authority delegated to them in the Hunting, Fishing and Trapping law.

The contents of this Rule Handbook were mostly contained in the prior draft of the Hunting, Fishing and Trapping law; this Rule Handbook is newly drafted and is not a revision of a prior rule.

In accordance with the Administrative Rulemaking law, a public meeting was held for this Rule Handbook on April 21, 2017 for which the comment period expired on April 28, 2017. There was only one (1) community member in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Public Meeting notice for the rule is posted in the Kalihwisaks (see page 36) and on the Oneida Register	April 6, 2017
Public Meeting held	April 21, 2017
Public Comment Period closed	April 28, 2017

The following attachments are included for your review:

1. Hunting, Fishing and Trapping Rule Handbook
2. Environmental Resource Board Approval
3. Oneida Conservation Department Approval
4. Summary Report
5. Public Meeting Packet
6. Copy of the Public Meeting Notice Published in the Kalihwisaks – Page 36 of the April 6, 2017 issue

Page 2

7. Sign in sheet from the April 21, 2017 Public Meeting
8. Public Meeting transcription from the April 21, 2017 Public Meeting
9. Public Meeting response memorandum
10. Redline draft of the final rule comparing it to the rule that received public comment.

In accordance with resolution BC-04-25-17-A, the effective date of the Hunting, Fishing and Trapping rule handbook shall be the same as for the Hunting, Fishing and Trapping law amendments, May 25, 2017.



Title 4. Environment and Natural Resources – Chapter 406

HUNTING, FISHING and TRAPPING

Rule # 1-13 – Hunting, Fishing and Trapping Handbook

- I. Purpose, Authority, Adoption, Amendment and Repeal
- II. Definitions
- III. General Requirements
- IV. Available Permits
- V. Tree Stands
- VI. Blinds
- VII. Baiting
- VIII. Endangered, Threatened and Protected Species
- IX. Possession, Registration and Transportation of Carcasses
- X. Fishing
- XI. General Regulations
- XII. Health Advisory
- XIII. Enforcement

I. Purpose, Authority, Adoption, Amendment and Repeal

1-1. Purpose. The purpose for these rules is to further detail the information related to harvests, limits, seasons, licenses, and other details to further support the Hunting, Fishing and Trapping law.

1-2. Authority. The Hunting, Fishing and Trapping law delegated the Environmental Resource Board and Conservation Department joint rulemaking authority pursuant to the Administrative Rulemaking law.

1-3. These rules were jointly adopted by the Environmental Resource Board and Conservation Department in accordance with the procedures of the Administrative Rulemaking law.

1-4. These rules may be amended or repealed by the joint approval of the Environmental Resource Board and Conservation Department pursuant to the procedures set out in the Administrative Rulemaking law. For the purpose of future amendments to these rules, each article is a separate rule and may be amended as such.

1-5. Should a provision of these rules or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1-6. In the event of a conflict between a provision of these rules and a provision of another rule, internal policy, procedure, or other regulation, the provisions of these rules control.

1-7. These rules supersede all prior rules, regulations, internal policies or other requirements relating to the Hunting, Fishing and Trapping law.

1-8. This article I applies to each subsequent rule listed herein.

II. Definitions

2-1. This article governs the definitions of words and phrases used within this Handbook. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Antlered Deer” means a deer which has either two (2) antlers with two (2) or more points on each antler or one (1) antler with four (4) or more points where each point must

measure one (1) inch in length from the main beam and, at a minimum, one (1) antler must be three (3) or more inches in length.

(b) “Baited Area” means an area within a one hundred (100) yard radius from any placed bait material, provided that once bait material is placed, the area remains a baited area for a period of ten (10) calendar days from the date the bait material is either fully consumed or removed.

(c) “Furbearer” means wildlife taken primarily for the sale of the said wildlife’s pelt and includes, but is not limited to, mink, muskrat, beaver, weasel, fox, coyote, bobcat, badger and raccoon.

(d) “Game Fish” means all species belonging to the trout, pike, catfish, bullhead, sunfish (including blue gill and crappie), bass, and perch families of fish.

(e) “Harass” means to shoot at, disturb, worry, rally, concentrate, harry, chase, drive, herd, or torment wildlife.

(f) “Open Water” means any water beyond a natural growth of vegetation rooted to the bottom and extending above the water surface of such height as to offer whole or partial concealment of the hunter.

(g) “Permanent Tree Stand” means any manufactured or constructed platform fastened by nails, screws, or other means deemed permanently fixed, for the purpose of allowing a person to view, observe, or hunt wild animals.

(h) “Possession Limit” means the maximum number of a particular wildlife species that may be in the possession of a person who has hunted, fished, or trapped two (2) days or more.

(i) “Raptor” means all hawks, owls, eagles, falcons, and osprey.

(j) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and includes any such weapon which may be readily restored to fire a fixed cartridge.

(k) “Semi-permanent Tree Stand” means any manufactured or constructed platform fastened, strapped, chained, or otherwise attached to a tree, for the purpose of allowing a person to view, observe or hunt wild animals.

(l) “Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (bird shot) or a single projectile for each pull of the trigger and includes any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) “Sight Exposed Bait” means any bones, meat or viscera of an animal, bird, or fish with or without skin, hide or feathers which can be seen from above the bait.

(n) “Size Limit” means the specific minimum length and/or maximum length in inches of a species of fish that may be possessed legally.

(o) “Small Game” includes, but is not limited to the following: geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; commonly known as rails, coots, mud hens, and gallinule; commonly known as snipe and woodcock; commonly

known as grouse, pheasants, partridges, and quail; cottontail rabbit, and gray and fox squirrel.

(p) “Specified Area” means areas where the taking of fish and wildlife is restricted to the specifications set forth by the law, rule or Environmental Resource Board resolutions.

(q) “Unprotected Species” means species which can be hunted year round without limit and includes: opossum, skunk, weasel, mice, and all other animals not mentioned in the Hunting, Fishing and Trapping law and these rules.

(r) “Waterfowl” means any wild species of geese, brants, or ducks.

(s) “Wet Set” or “Water Set” means a trap which is staked in such a manner as to permit the trap or trapped animal to reach water at any point.

III. General Requirements

3-1. *License and Permit on Person.* All persons shall have in his/her possession, while hunting, fishing or trapping within the exterior boundaries of the reservation, a valid Oneida sportsman license issued by the Department allowing him/her to hunt, fish, or trap on the reservation and, if the action also requires a permit, the applicable permit also.

3-2. *Limit on Non-Tribal Member Licenses.* The Department may not issue more than thirty-five (35) Oneida sportsman licenses to Non-Tribal Members in any calendar year. In addition, in order for a non-Tribal member to apply for an Oneida sportsman license, the non-Tribal member shall consent in writing to forfeit any deer hunting privileges granted by a state issued hunting license/permit in regard to all land within the Reservation boundaries, regardless of ownership status.

3-3. *License Application Deadlines and Expirations.* Tribal members, descendants, affiliates of other tribes and Tribal member’s spouses and/or dependents may apply for a sportsman license at any time; the application deadline for a non-member sportsman license is the third (3rd) Monday of August. Sportsman licenses expire each year on August 31st.

3-4. *License and Permit Availability and Schedule.* Oneida sportsman licenses and permits may be obtained from the Conservation Department, which is located at N8047 County Road U.

(a) *Permit Availability.* Nuisance permits, sustenance permits, ceremonial permits and dog training permits are only available to Tribal members and Tribal members shall apply for each of these permits separately from the Oneida sportsman license. Turkey permits are available to all persons eligible for an Oneida sportsman license that is not limited to fishing, provided that licensees shall apply for turkey permits separately from the Oneida sportsman license.

(b) *License and Permit Schedule.* The license and permit schedule is included in these rules as Attachment A.

3-5. *Denial of a License or Permit.* An application for a sportsman license or permit may be denied according to section 406.6-7 of the Hunting, Fishing and Trapping law.

3-6. Applicants born on or after January 1, 1973 shall present a hunter’s education certification prior to issuance of any sportsman license.

IV. Available Permits

4-1. *Comprehensive List of Available Permits.* Subject to the requirements provided in the Hunting, Fishing, Trapping law and these rules, the Department may issue the following permits,

provided that in order to be eligible for a permit, a full sportsman license is required; a fishing only sportsman license is not sufficient:

- (a) Tribal Member Ceremonial/Feast Permit;
- (b) Disabled Permit;
- (c) Nuisance Permit;
- (d) Sustenance Permit;
- (e) Deer Gun Permit;
- (f) Deer Gun Hunter's Choice Permit;
- (g) Deer Bow Permit;
- (h) Small Game Permit;
- (i) Turkey Permit;
- (j) Waterfowl Permit;
- (k) Furbearer Permit;
- (l) Dog Hunting Permit; and
- (m) Found Carcass Permit.

4-2. *Responsibility to Set Seasons and Limits.* The Environmental Resource Board, with input from the Conservation Department, shall establish, annually by written Environmental Resource Board resolution, by no later than the end of March each calendar year, the following and, in doing so shall consider the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest:

- (a) Any bag limits applicable to various permits.
- (b) Any possession limits applicable to various permits.
- (c) Season opening and closing dates for each permit, provided that:
 - (1) Bow deer season may not open before September 1st and may not close any later than January 31st.
 - (2) Muzzleloading deer season shall open the calendar day following the close of the deer gun season and may not close any later than the first Sunday in January.
 - (3) The season for small game may not begin before September 1st or close later than March 31st.
 - (4) The season for waterfowl may not begin before September 1st or close later than December 31st.
 - (5) The seasons for furbearers may not begin before October 1st or close later than April 1st.
- (d) Any hunting hour restrictions that may apply to a season, provided that if setting hunting hours, such hours may not permit hunting prior to thirty (30) minutes before sunrise or extend beyond fifteen (15) minutes after sunset.
- (e) The number of carcass tags that may be issued pursuant to each applicable permit, which may include limitations based on age, sex, size, species or other factors established by the Environmental Resource Board. Daily bag and possession limits pursuant to a small game permit may not exceed a harvest of ten (10) wildlife of each species per day.

(f) Fish minimum lengths and slot sizes for designated fish species.

(g) Which areas are designated as available for hunting and trapping as indicated on the Oneida Nation Hunting Map. If the Nation acquires additional properties eligible for hunting and trapping after the initial annual Oneida Nation Hunting Map has been approved, the Environmental Resource Board may adopt a revised Oneida Nation Hunting Map by written resolution. Upon the setting of such designated areas, the Department shall mark all properties not open for hunting and trapping.

(h) Any designated protected waters in which fishing is not permitted.

4-3. *Tribal Member Ceremonial/Feast Permit.* In addition to the requirement in section 406.6-2 of the Hunting, Fishing and Trapping law, the following requirements also apply:

(a) A ceremonial/feast permit may not be effective for a period longer than ten (10) calendar days and may only be issued between the third (3rd) Saturday of September and the last day of December for any calendar year .

(b) The Department shall indicate on each permit how much wildlife may be taken pursuant to the permit and which areas are open for the ceremonial/feast hunt.

(c) Permittees shall register any deer harvested pursuant to a ceremonial/feast permit within twenty-four (24) hours of the harvest.

(d) A ceremonial/feast permit issued for harvested deer may only be issued for antlerless deer; it is unlawful to harvest an antlered deer under a ceremonial/feast permit.

4-4. *Disabled Permit.* In addition to the requirements and limitations regarding disabled permits included in section 406.6-6 of the Hunting, Fishing and Trapping law, a disabled hunter permit also requires:

(a) The vehicle is located off of the hard surface of the roadway and is not in violation of any applicable prohibition or restriction that applies to parking, stopping or standing of the vehicle.

(b) The holder of the permit is not as a designated hunter.

(c) The holder of the permit has obtained permission from any person who is the owner or lessee of private property across or on to which the holder of the permit intends to discharge a weapon.

(d) The vehicle bears disabled plates or displays a sign that is at least 11 inches square on which is conspicuously written “disabled hunter”.

(e) The holder of the permit discharges the weapon away from and not across or parallel to the roadway.

4-5. *Nuisance Animal Removal Permit.* For each nuisance animal removal permit, based on the circumstances and extent of the nuisance, the Department shall provide the amount of wildlife that the permittee may take pursuant to the permit and may limit the amount based on age, sex, size, species or other relevant factors established by the Department; the Department may also the prescribed manner of taking required by the permit. In addition to the requirements in section 406.8 of the Hunting, Fishing and Trapping law, the following also apply:

(a) *Assistance by the Department.* The Department may assist the permittee in taking and/or trapping a nuisance animal if:

(1) Extraordinary damage is occurring, where the determination of extraordinary damage is in the Department's best discretion.

(2) The permittee has demonstrated an inability to harvest an adequate number of the nuisance animals and damage to the permittee's property in the current calendar exceeds, or is likely to exceed, \$5,000.00.

(b) *Conditions to Nuisance Deer Removal Permits.* The following conditions apply to nuisance deer removal permits:

(1) Permittees and permittees' agents may hunt deer only during the period from thirty (30) minutes before sunrise to fifteen (15) minutes after sunset during the closed deer gun season. During the deer gun season permittees and permittees' agents shall comply with any restrictions regarding shooting hours.

(2) No deer may be harvested pursuant to a nuisance deer removal permit within the twenty-four (24) hour period prior to the opening of gun deer season.

(3) The weapon restrictions provided in article 4-7(a)(1) and (2) apply to nuisance deer removal permits.

(4) If the permittee and/or the permittee's agent does not fulfill fifty percent (50%) or more of the nuisance deer removal permit's quota in the initial thirty (30) calendar days for which the permit is effective, the Department may withdraw the permit.

(5) Unless specifically exempt by the Department in the permit, only deer without antlers or with antlers less than three (3) inches in length may be harvested pursuant to a nuisance deer removal permit.

(c) *Conditions to Nuisance Canadian Geese Removal Permits.* The following conditions apply to nuisance Canadian geese removal permits:

(1) Permittees and/or permittees' agents may retain any Canadian goose carcasses harvested pursuant to a nuisance Canadian geese removal permit, provided that permittees' agents may only retain carcasses declined by the original permittee.

(2) The weapon restrictions provided in article 4-10(a) apply to nuisance Canadian geese removal permits.

(3) If during open goose season, the Department may not issue an applicant a nuisance Canadian geese removal permit until all of the applicant's goose carcass tags under the goose permit have been filled.

4-6. *Sustenance Permits.* The Department may issue sustenance permits to Tribal Members who are in need of nourishment which allows the permittee to harvest one (1) additional antlerless deer throughout the course of the open deer bow, gun or muzzleloader seasons. Only one (1) sustenance permit may be issued per household. Permittees may designate a hunter to hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law. Permittees shall register any deer harvested pursuant to a sustenance permit within

twenty-four (24) hours of the harvest. The weapon restrictions provided in article 4-7(a)(1), (2) and (3) below apply to sustenance permits.

4-7. *Deer Permits.* This article applies to deer gun, deer bow and deer hunter's choice permits.

(a) *Restrictions on Deer Permits.*

(1) *Firearms Restrictions.* No person may hunt deer with:

(A) A rifle, with a shot gun smaller than twenty (20) gauge or larger than ten (10) gauge, or with a muzzleloader smaller than .40 caliber.

(B) Any handgun which is loaded with caliber chambered for commercially manufactured center fire cartridge which produce a muzzle velocity of nine hundred fifty (950) feet per second and no more than two thousand two hundred (2,200) feet per second and has a barrel length of five (5) inches measured from the muzzle to the firing pin with the action closed. Hunters using handguns for deer hunting may possess other firearms legal for the zone in which they are hunting deer.

(2) *Deer Archery Season Regulations.*

(A) No person may hunt deer with a bow having a pull strength less than thirty-five (35) pounds or using an arrow that does not have a broadhead.

(B) No person may hunt deer with a crossbow, unless the crossbow:

(i) Is fired from the shoulder;

(ii) Has a minimum draw weight of one hundred (100) pounds;

(iii) Has stock of not less than thirty (30) inches in length;

(iv) Is used with arrows or bolts of not less than fourteen (14) inches in length with a broadhead; and

(v) Has a working safety.

(C) No person may possess a deer harvested with a firearm during an archery only deer hunting season.

(D) No person hunting deer under the authority of an archery deer permit may have a firearm in his/her possession unless participating in muzzleloading season or using a ceremonial/feast permit.

(E) Group hunting is not permitted during deer archery hunting seasons.

(3) *Archery Hunting During Deer Gun Season.* A person may hunt deer with archery equipment during deer gun season and shall tag any such harvested deer with either a deer gun or deer bow tag, provided that the blaze orange requirements in this article apply.

(4) *Blaze Orange Required.* During the gun deer season and muzzleloading season, no person shall hunt any wildlife, except waterfowl, unless at least fifty percent (50%) of the person's outer clothing above the waist is colored blaze/hunter orange.

(5) *Hunting Deer with Dogs Prohibited.* No person may hunt deer with the aid of a dog(s).

(6) *Removal and Retention of Carcass Tags.* Permittees that harvest deer shall ensure that deer carcass tags remain attached to the deer until the carcass is butchered or processed for consumption and, once the carcass tag is removed from the deer, shall retain the carcass tag until all of the meat from the subject

carcass has been consumed. A person who receives meat from another as a gift is not required to possess the carcass tag, provided that the permittee gifting the meat shall provide the receiver with the carcass tag number pursuant to which the meat was harvested.

(7) *Designated Hunters.* Designated deer hunters may only take antlerless deer and, regardless of the number of tags issued to the original permittee, may fill a maximum of two (2) deer carcass tags on behalf of the original permittee.

(8) *Registration.*

(A) Permittees shall register deer harvested by a firearm during the gun deer season no later than 4:00 p.m. the day after the close of the gun deer season.

(B) Permittees shall register all deer harvested by a bow and arrow, cross bow or muzzleloader no later than 4:00 p.m. on the third (3rd) day after the deer was harvested.

(b) *Deer Hunter's Choice Permits.* Deer hunter's choice permits may be issued to Tribal Member elders and first time graduates of a hunter safety program. A deer hunters choice permit allows the permittee to harvest an additional antlerless deer during the gun season and, if the tag has not been filled, extending into the deer muzzleloading season. Permittees may designate a hunter to hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law.

4-8. *Small Game Permit.* No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(a) *Permissible Methods.* The hunting of small game birds is restricted to the use of an air rifle, shotgun or bow and arrow. The hunting of small game mammals is restricted to the use of an air rifle, shotgun, rifle, or bow and arrow.

(1) *Firearm Restrictions.* No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges.

(C) Rifles or handguns may not be used for hunting birds.

(D) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(E) While possessing shot shells larger than two (2) shot or while possessing slugs, except that during deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting small game.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(2) *Bow and Arrow Restrictions.* No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Use of Dogs.* Dogs may be used while hunting small game.

4-9. *Turkey Permit.* An issued turkey permit authorizes the permittee to hunt turkey during both the spring and fall seasons; a separate permit is not required for each season. Hunting dogs may be used during the fall turkey season. Designated hunters named pursuant to a turkey permit and based on the requirements of the Hunting, Fishing and Trapping law in section 406.9-4 may fill a maximum of two (2) turkey tags for the original permittee, regardless of the number of tags issued to the original permittee.

4-10. *Waterfowl Permit.* An issued waterfowl permit authorizes the permittee to hunt waterfowl during the set season, but does not authorize permittees to possess live waterfowl; permittees shall kill all waterfowl immediately once possession is gained.

(a) *Permissible Methods.* No person may take waterfowl with a trap, net and/or fishhook.

(1) *Firearms Restrictions.* No person may hunt waterfowl:

(A) With a shotgun larger than ten (10) gauge; duck plugs are not required.

(B) With a rifle of any type.

(C) With a shotgun with a barrel length less than eighteen (18) inches.

(D) With a handgun of any type.

(E) While in possession of lead shot.

(2) *Bow and Arrow Restrictions.* No person may hunt waterfowl:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(3) *Migratory Bird Calls.* No person may use electronic calls of any type to hunt waterfowl.

(4) *Hazing.* No person may drive, rally or chase waterfowl with any motorized conveyance in order to force the waterfowl into hunters' range.

(5) *Live Decoys.* No person may hunt waterfowl with the aid of live decoys. All live, tame or captive waterfowl shall be removed for a period of ten (10) consecutive days prior to hunting and confined within an enclosure which substantially reduces the audibility of the waterfowls' calls and completely conceals the captive waterfowl from the sight of any non-captive waterfowl.

(6) *Decoys.* No person hunting waterfowl may place decoys beyond two hundred (200) feet from the cover or blind in which the person is located. No person hunting waterfowl may:

(A) Place decoys in the water prior to one (1) hour before opening of waterfowl hunting time.

(B) Leave decoys in the water more than twenty (20) minutes after the close of waterfowl hunting time.

(b) *Blind Restrictions.* No person hunting waterfowl may establish a waterfowl hunting blind, including the bed of any navigable lake, reservoir, pond or stream, prior to seven (7) days before the waterfowl hunting season or leave it established beyond seven (7) days after the close of the waterfowl hunting season.

(c) *Open Water Hunting.* Unless pursuing a crippled waterfowl, waterfowl may not be hunting from a moving watercraft. If a motorized watercraft is used to pursue a crippled

waterfowl into open water, the motor must be shut off and all forward movement of the boat must cease before loading and shooting at the crippled waterfowl.

4-11. *Furbearer Permit.* A furbearer permit authorizes Tribal members to operate an unlimited number of traps or snares in any combination and authorizes spouses or dependents of Tribal members or persons affiliated with another tribe to operate a maximum of one hundred and fifty (150) traps or snares in any combination.

(a) *Permissible Methods.* No person may:

(1) Trap with any leg hold dry set trap larger than a number four (4).

(2) Trap with any leg hold wet set trap larger than a number five (5).

(3) Trap within twenty-five (25) feet of any sight-exposed bait.

(4) Set any trap or snare unless a metal tag is attached, stamped, or engraved legibly upon the trap or snare which has the owner's enrollment number and/or the name, address, and phone number.

(5) Take mink or muskrat by means other than trapping or snaring.

(6) Use any traps to take any wildlife not specified as furbearers.

(7) Possess any trap for the purpose of trapping furbearers other than a leg hold trap, live trap, conibear trap, snare or colony trap.

(8) *Firearm Restrictions.* No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges, provided that a permittee may use up to a .223 caliber for fox and coyote hunting.

(C) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(D) While possessing shot shells larger than two (2) shot or while possessing slugs, except that:

(i) During deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting furbearer; and

(ii) A buckshot may be used for hunting fox and coyote.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(9) *Bow and Arrow Restrictions.* No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Set and Placement Restrictions.* No person trapping furbearers may:

(1) Operate trap sets which permit the trapped animal to reach water, except during the operation of a wet set or colony trap during applicable furbearer seasons.

(2) Set any trap on any perch more than three (3) feet above the ground.

(c) *Trap Tending.* Permittees shall check all dry set traps at least once every twenty-four (24) hours and shall and remove any wildlife trapped therein. Permittees shall check all wet set traps at least once every four (4) calendar days and shall remove any wildlife trapped therein.

(d) *Use of Dogs*. Dogs may be used while hunting raccoon, coyote and fox.

(e) *Permission to Hunt from a Motor Vehicle*. Permittees may request permission to hunt furbearers from a motor vehicle; absent permission from the Department it is not permissible to hunt, kill or harass furbearers from any type of motor vehicle.

4-12. *Dog Training Permit*. The Department may issue dog training permits to persons who wish to possess and release small game birds for dog training purposes. The permit shall contain requirements such as the location where the birds will be released and, if applicable, the maximum number of birds that may be released.

(a) Prior to being released, the permittee shall mark and identify all birds to be released by fixing a leg band to the bird's leg which identifies the dog training permit number.

(b) The following small game birds may be released pursuant to a dog training permit:

(1) Pheasant;

(2) Grey partridge;

(3) Red Legged Partridge;

(4) Bob White Quail;

(5) Chukar Partridge; and

(6) Pharo Pigeons.

(c) The approval of the Environmental Resource Board is required, prior to release, should a permittee wish to release a small game bird that is not included in the list of authorized small game birds provided in article 4-12(b).

4-13. *Found Carcass Permit*. A found carcass permit is available to Tribal members only for any wildlife found injured and/or killed by any non-hunting related cause. To obtain a Found Carcass Permit, the requestor shall contact the Department and provide the location of the found carcass. After inspecting the condition of the wildlife, the Department shall either issue the requestor a Found Carcass Permit or deny the permit and take the carcass into possession.

V. Tree Stands

5-1. *Permanent Tree Stands Prohibited on the Nation's Lands*. Permanent tree stands may not be erected on land owned by the Nation.

5-2. *Semi-Permanent Tree Stands*. Semi-permanent tree stands may be put, but not sooner than two (2) weeks before the archery season opens and shall be removed no later than April 1st.

5-3. *Tree Stand Owner Information*. All tree stands must be stamped with the owner's enrollment number and/or name, address and phone number for identification.

VI. Blinds

6-1. If a blind is constructed with manufactured materials, such blind requires identification either with a tag affixed to the blind or engraved directly into the blind which contains the owner's enrollment number and/or name, address and phone number for identification.

6-2. During the gun deer season and muzzleloading season, no person shall occupy a blind unless there is three hundred sixty (360) degrees of visible blaze orange on the blind.

VII. Baiting

7-1. Persons may not:

(a) Use bait material, which includes, but is not limited to, liquid or scent, for attracting wildlife:

(1) which contains or, at the time of use, is contained within: honey, bones, fish, meat, solid animal fat, parts of animal carcasses, metal, paper, plastic, glass, wood (other than hollow stumps, or other non-degradable materials;

(2) in excess of ten (10) gallons of bait material in a baited area, provided that, salt and salt blocks are excluded from this restriction.

(b) Hunt waterfowl with the aid of bait other than grain crops left in the field due to normal agricultural practices.

(c) Hunt over bait materials, regardless of whether or not the bait materials were intentionally placed as bait, which do not comply with the requirements of these rules.

VIII. Endangered, Threatened and Protected Species

8-1. Absent a nuisance permit, no person may take or kill any endangered, threatened or otherwise protected species or damage or tamper with the nests or eggs of an endangered, threatened or otherwise protected species on the reservation.

8-2. A federal permit issued by the United States Fish and Wildlife Service is required in order for any Tribal member possess an eagle or any part thereof. Tribal members may request application forms directly from the United States Fish and Wildlife Service, the Department shall also have copies of the application forms available.

IX. Possession, Registration and Transportation of Carcasses

9-1. *Attachment of Carcass Tags.* For wildlife subject to permit that includes carcass tags, upon taking of the wildlife, the permittee shall immediately attach the carcass tag as follows:

Wildlife Species	Required Method of Carcass Tag Attachment
Deer	Attach to antler, ear or hind leg
Goose	Attach to featherless portion of the leg
Turkey	Attach to featherless portion of the leg

9-2. *Wildlife Registration.* Except for deer during deer gun hunting season or where shorter timeframes are provided in these rules, a permittee taking wildlife pursuant to a permit which requires a carcass tag shall register the said wildlife with the Department within three (3) calendar days of the taking. Permittee may register wildlife at the Department or any other registration area designated by the Department. Deer harvested during deer gun hunting season shall be registered by 4 pm the day after close of the firearm season. Deer registration tag should be retained with meat until consumed.

9-3. *Wildlife Transportation.* Wildlife may not be transported by persons that do not possess the required Oneida sportsman license and any applicable permits. A person may only transport his or her own lawfully possessed wildlife.

(a) *Birds.* Permittees shall ensure that, at a minimum, the fully feathered head or one (1) fully feathered wing remains attached to each bird that is transported from the field until the bird reaches the permittees residence or processing location.

(b) *Fish.* While in transportation, all fish must be able to be readily counted. Fish may be dressed, but permittees shall ensure that the body of each fish remains intact while the fish is transported from the water until the fish reaches the permittee's residence or processing location.

(c) *Found Carcasses.* Persons finding wildlife carcasses may not transport said carcasses until such person has applied for and received a Found Carcass Permit from the

Department. Permittees shall abide by any requirements of the Found Carcass Permit, including those related to carcass tags and transportation of the carcass.

(d) *Registration Required Prior to Transportation.* Wildlife subject to registration requirements may not be transported off of the reservation until all registration requirements have been satisfied.

(e) *Accompaniment of Wildlife Pending Registration.* Permittees shall accompany all wildlife harvested subject to registration requirements at all times until all registration requirements have been satisfied. No person may knowingly accept for and transport another's wildlife without the valid license and permit holder present. This provision does not apply to authorized enforcement persons who, in the course of their duties, may be required transport seized wildlife.

X. Fishing

10-1. *Seasons.* The fishing season shall be continuous (year-round) unless specific seasons are established in accordance with article 4-2 of these rules. Further, fishing hours are not limited.

10-2. *Possession and Bag Limits.* Persons fishing shall comply with any possession, size and bag limits applicable to fish as established in accordance with article 4-2 of these rules.

10-3. *Fishing Restricted to Authorized Methods.* No person may take or kill fish by any method other than rods, lines and bare hooks, baited fish hooks, nets, spears, use of hands, and bows/arrows, except that bows/arrows may not be used on rough fish. For the purpose of this section, rough fish means carp, all sucker species and sheep head.

10-4. *Firearm Restriction.* No firearms may be used while fishing.

10-5. *Trespass.* No person may fish on private waters without permission from the owner or occupant. No person may fish on Tribal, state, or federal refuge waters or protected waters.

10-6. *Trading of Fish.* All fish caught or taken by any means may be traded, provided that persons shall comply with possession and bag limits at all times, regardless of trading.

10-7. *Ice Fishing.* Ice fishing holes may not be larger than ten inches (10") in diameter. While ice fishing, a person may not use more than four (4) fishing lines at one (1) time.

10-8. *Attending Lines* – Lines may not be left unattended.

XI. General Regulations

11-1. Persons may not:

(a) Hunt with a handgun if under the age of eighteen (18) unless under the immediate supervision of a parent or responsible adult.

(b) Transport, deliver, receive, or offer to deliver or receive for transporting any wildlife or part thereof at any time other than during the open season and three (3) calendar days after.

(c) Exceed daily bag or possession limits, or possess wildlife above or below the size limits established in accordance with article 4-2 of these rules.

(d) Possess any live wildlife unless authorized by the Department.

(e) Hunt species for which hunting seasons are not established, hunt wildlife during the closed season, or hunt wildlife in a refuge/closed area.

(f) Hunt any species more than fifteen (15) minutes after sunset or more than thirty (30) minutes before sunrise during the gun deer season. Except during the gun deer hunting

season, coyote, fox, raccoon and unprotected species may be hunted without hunting hour restrictions.

(g) Leave, deposit, place or throw on the waters, ice, shores of water or upon Tribal land, any empty receptacles containing bait, fish offal, fish carcasses, and/or fish parts.

(h) Catch, kill or take frogs and turtles except by the following authorized methods: hand, dip net, hook and line, or spear.

(i) Shine while in possession of a firearm, bow or crossbow.

(j) Hunt in a party of more than ten (10) persons.

XII. Health Advisory

12-1. Fish caught in Duck Creek, ducks, geese, and other wildlife may contain PCB's. Women and children are most at risk for health defects. Detailed information is available from the Oneida Conservation Department.

XIII. Enforcement

13.1. *Fine and Penalty Schedule.* Violation of the Hunting, Fishing and Trapping law and/or rules may result in the fines/penalties as provided in the Fine and Penalty Schedule, which is incorporated into these rules as Attachment B.

13.2. *Animal Assessments.* In the event the Board finds a violation of the Hunting, Fishing and Trapping law and/or rules, in addition to imposing a fine or penalty, it may also impose a wildlife protection assessment (civil recovery value) as provided in the Animal Assessment Schedule, which is incorporated into these rules as Attachment C.

ATTACHMENT A - LICENSE AND PERMIT SCHEDULE		
License or Permit Name	Application Deadline**	Application Fee
Oneida Sportsmans License		
Adult Tribal Member	Not Applicable	\$10
Elder/Disabled Tribal Member	Not Applicable	No Charge
Youth Tribal Member	Not Applicable	\$10
Spouse or Dependent of a Tribal Member	Not Applicable	\$15
Elder Spouse or Elder Dependent of a Tribal Member	Not Applicable	\$8
Adult Descendant/Other Tribal Affiliation	Not Applicable	\$25
Elder Descendant/Other Tribal Affiliation	Not Applicable	\$13
Youth Descendant/Other Tribal Affiliation	Not Applicable	\$15
Adult Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$500
Elder Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$250
Youth Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$100
Tribal Member Ceremonial/Feast Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Disabled Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Nuisance Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Sustenance Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Deer Gun Permit		
Included in the issuance of Oneida Sportsman License	Prior to the Opening Date of the Season*	No Charge
Deer Gun Hunter's Choice Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Deer Bow Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Goose Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Small Game Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Turkey Permits		
Adult Tribal Member	Not Applicable	\$5
Elder/Disabled Tribal Member	Not Applicable	No charge
Youth Tribal Member	Not Applicable	No charge
Spouse or Dependent of a Tribal Member	Not Applicable	\$10
Elder Spouse or Elder Dependent of a Tribal Member	Not Applicable	\$5
Adult Descendant/Other Tribal Affiliation	Not Applicable	\$10
Elder Descendant/Other Tribal Affiliation	Not Applicable	\$5
Youth Descendant/Other Tribal Affiliation	Not Applicable	\$5
Adult Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$25
Elder Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$10
Youth Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$10
Furbearer Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Dog Training Permits		
Adult Tribal Member	Not Applicable	\$20
Elder/Disabled Tribal Member	Not Applicable	\$10
Found Carcass Permits		
Oneida Tribal Members Only	Not Applicable	No Charge
* It is in the Department's full discretion whether to issue licenses and/or permits that do not comply with the required application deadlines, provided that the Department shall assess a \$10.00 late fee against all late applications, regardless of whether the license/permit is issued.		
** In all instances where an application deadline is not applicable, the license/permit may applied for up until any applicable established seasons have closed.		

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Hunting an antlered deer under a Ceremonial and/or Feast Permit	Law §406.6-2(a); Rule 4-3(d)	\$ 150	\$ 300	Y	Y
Unnamed person hunting in a Ceremonial and/or Feast Permit	Law §406.6-2(c)	\$ 150	\$ 300	N	N
Failure to notify the Department or provide at less than twenty-four (24) hour notice of the location of the Ceremonial/ Feast hunt	Law §406.6-2(d)	\$ 150	\$ 300	N	N
Provide false information to Department when applying for a license or permit	Law §406.6-4(a)	\$ 300	\$ 600	Y	N
Fail to provide relevant information to Department when applying for a license or permit	Law §406.6-4(a)	\$ 300	\$ 600	Y	N
Aid another in fraudulently securing a license or permit.	Law §406.6-4(b)	\$ 150	\$ 300	N	N
Altering or defacing a permit	Law §406.6-5	\$ 300	\$ 600	Y	N
Possession of an altered or defaced permit	Law §406.6-5	\$ 300	\$ 600	Y	N
Lend or borrow an Oneida sportsman license and/or permit	Law §406.6-5	\$ 300	\$ 600	Y	N
Failure to display disabled hunter permit sticker when or where required	Law §406.6-6	\$ 600	\$ 1,200	Y	N
Enter onto private lands and/or waters to take or retrieve wildlife without permission	Law §406.7-1(a)	\$ 150	\$ 300	N	N
Litter or leave any other waste onto the reservation's lands/waters	Law §406.7-1(b)	\$ 300	\$ 600	Y	Y
Oneida Tribal Members Only	Law §406.7-1(c)	\$ 300	\$ 600	Y	Y
Cause damage to the land or property of the Nation or Department	Law §406.7-1(c)	\$ 600	\$ 1,200	Y	Y
Carelessly waste wildlife.	Law §406.7-1(d)	\$ 300	\$ 600	Y	Y
Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife builds	Law §406.7-1(e)	\$ 150	\$ 300	Y	Y
Take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young	Law §406.7-1(f)	\$ 150	\$ 300	Y	Y
Harvest wildlife with the aid of an explosive, poison, exploding tip or point, electrifying device or stupefying substance or agent	Law §406.7-1(g)	\$ 750	\$ 1,500	Y	Y
Take another person's wildlife without consent	Law §406.7-1(h)	\$ 300	\$ 1,500	Y	Y
Disturb (or take) another's hunting, fishing, or trapping equipment	Law §406.7-1(h)	\$ 750	\$ 1,500	Y	Y
Interfere with the lawful hunting, fishing or trapping of another	Law §406.7-1(h)	\$ 300	\$ 600	N	N
Stock or possess live wildlife without a permit	Law §406.7-1(i)	\$ 300	\$ 600	Y	Y
Introduce or release wildlife, fish eggs, or receptacles containing bait without a permit	Law §406.7-1(j)	\$ 300	\$ 600	Y	Y
Reckless use of any device (or weapon) typically used for harvesting wildlife	Law §406.7-1(k)	\$ 750	\$ 1,500	Y	Y
Shoot firearms within 100 yards of any building structure	Law §406.7-1(l)	\$ 750	\$ 1,500	Y	Y
Place or operate non-live traps within 100 yards of any building structure	Law §406.7-1(l)	\$ 300	\$ 600	Y	Y

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Sell or purchase wildlife that was harvested on the reservation	Law §406.7-1(o)	\$ 300	\$ 1,500	Y	Y
Refusal to obey a Warden's lawful order	Law §406.7-1(p)	\$ 600	\$ 1,200	Y	N
Inflict or threaten to inflict bodily harm upon a Warden	Law §406.7-1(q)	\$ 1,500	\$ 3,000	Y	Y
Faiure to possess a license/permit/tag/permission to hunt, trap, or transport such wildlife	Law §406.7-2	\$ 150	\$ 300	N	N
Driver taking untagged deer killed in collision with driver's vehicle	Law §406.7-3	\$ 150	\$ 300	Y	N
Failure to possess/attach carcass tag where required	Law §406.7-4	\$ 300	\$ 600	N	N
Failure to obtain nuisance animal removal permit	Law §406.8-1	\$ 150	\$ 300	N	N
Relocate nuisance animal to Tribal lands without authorization from Department	Law §406.8-1	\$ 150	\$ 300	N	N
Relocate nuisance animal to private property without authorization from landowner	Law §406.8-1	\$ 150	\$ 300	N	N
Failure to obtain nuisance animal permit for certain nuisance endangered/threatened/protected species subject to permit	Law §406.8-2	\$ 150	\$ 300	N	N
Failure to keep/provide a record of nuisance animal permit activity	Law §406.8-2(b)	\$ 150	\$ 300	N	N
Failure to return unused nuisance animal permits and carcass tags	Law §406.8-2(c)	\$ 150	\$ 300	N	N
Failure to report taking a nuisance animal under emergency circumstances	Law §406.8-3(b)(1); Law §406.8-4	\$ 150	\$ 300	N	N
Landowner failure to satisfy requirements allowing agent assignment	Law §406.8-4(a)	\$ 150	\$ 300	N	N
Failure to follow Department removal limitations	Law §406.8-4(b)	\$ 150	\$ 300	N	N
Landowner or lessee charging any fee	Law §406.8-4(c)	\$ 150	\$ 300	N	N
Landowner or lessee refusal to allow warden access to premises where removal is conducted	Law §406.8-6	\$ 150	\$ 300	N	N
Landowner or lessee refusal to provide warden information regarding removal	Law §406.8-6	\$ 150	\$ 300	N	N
Retain more than one (1) deer pursuant to a nuisance animal permit	Law §406.8-7(a)	\$ 300	\$ 600	Y	Y
Failure to obtain permit to retain nuisance or sell nuisance wildlife	Law §406.8-7(b)	\$ 300	\$ 600	Y	Y
Failure to obtain license/permit to commercialize in, sell, trade, ship or transport any wildlife	Law §406.8-7(c)	\$ 500	\$ 1,000	Y	Y
Hunt using any weapon other than an authorized firearm, air rifle, bow or crossbow	Law §406.9-1(a)	\$ 600	\$ 1,200	Y	N
Discharge a firearm/air rifle/bow/ crossbow into reservation lakes, reservoirs, or any area designated for public use	Law §406.9-1(b)(1)	\$ 750	\$ 1,500	Y	N
Discharge a firearm/air rifle/bow/crossbow across a roadway.	Law §406.9-1(b)(2)	\$ 300	\$ 600	N	N
Discharge a firearm/air rifle/bow/ crossbow within one hundred (100) yards of any structure	Law §406.9-1(b)(3)	\$ 300	\$ 600	N	N

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Transport any loaded firearm/air rifle/cocked bow/crossbow in a vehicle	Law §406.9-1(c)	\$ 300	\$ 600	N	N
Hunting with the use of aircraft	Law §406.9-2(a)	\$ 500	\$ 1,000	N	N
Hunt within fifty (50) feet of the center of a paved road	Law §406.9-2(b)	\$ 300	\$ 600	N	N
Unlawfully hunting/shooting from a vehicle	Law §406.9-2(c)	\$ 750	\$ 1,000	N	N
Hunt while under the influence of alcohol or controlled substance	Law §406.9-2(d)	\$ 750	\$ 1,500	N	N
Hunt with the aid of artificial light	Law §406.9-2(e)	\$ 300	\$ 600	N	N
Shining during prohibited times	Law §406.9-2(f)	\$ 300	\$ 1,500	N	N
Hunt in a party of more than ten (10) persons	Law §406.9-2(g)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting any firearm for which the possession is unlawful	Law §406.9-2(h)(1)	\$ 600	\$ 1,200	Y	N
Hunt with, or possess while hunting slugs (except for during deer firearm season)	Law §406.9-2(h)(2)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting a handgun unlawful barrel length	Law §406.9-2(h)(3)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting a concealed handgun without a valid permit	Law §406.9-2(h)(4)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting a unlawful shotgun/unlawful shotgun barrel length	Law §406.9-2(h)(5)(A)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting a rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches without a valid federal permit.	Law §406.9-2(h)(5)(B)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting a fully-automatic firearm	Law §406.9-2(h)(5)(C)	\$ 300	\$ 600	N	N
Hunt with, or possess while hunting muffler/silencer	Law §406.9-2(h)(5)(D)	\$ 300	\$ 600	N	N
Failure to report/render aid for hunting accident	Law §406.9-3	\$ 1,500	\$ 3,000	Y	Y
Failure of designated hunter to deliver harvested wildlife to permittee	Law §406.9-4(c)	\$ 300	\$ 600	Y	Y
Knowingly allowing a person aged fourteen (14) or younger to hunt without being accompanied by an required adult/mentor (cite adult/mentor; minor without licene may be cited under Rule 3-1)	Law §406.9-5(a), (b) or (c)	\$ 500	\$ 1,000	Y	N
Minor hunting without being properly accompanied by adult/mentor (cite adult/mentor)	Law §406.9-5(a) or (b)	\$ 300	\$ 600	Y	N
Failure of adult accompanying a youth hunter to remain withing voice/sight contact	Law §406.9-5(a)	\$ 300	\$ 600	Y	N
Minor under ten (10) years old in possession of a weapon	Law §406.9-5(c)	\$ 300	\$ 600	Y	N
Failure to follow the youth mentor requirements when acting as a mentor	Law §406.9-5(d) or (e)	\$ 300	\$ 600	Y	N
Failure to maintain required contact with the member of the hunting party for whom a deer was harvested	Law §406.9-6(a)	\$ 300	\$ 600	N	N
Failure to tag deer before field dressing/moving/ leaving unattended	Law §406.9-6(c)	\$ 150	\$ 300	N	N
Hunting, fishing or trapping within the exterior boundaries of the reservation, without a valid Oneida sportsman license/permit in possession	Rule 3-1	\$ 750	\$ 1,500	Y	N

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Possess Oneida Sportsmans license and hunt with state license within the Reservation	Rule 3-2	\$ 300	\$ 600	Y	Y
Violate Ceremonial and/or Fest Permit requirement	Rule 4-3(b); Law 406.6-2(a)	\$ 150	\$ 300	N	N
Violate Disabled Permit requirement	Rule 4-4	\$ 150	\$ 300	N	N
Violate Nuisance Animal Removal permit	Rule 4-5	\$ 150	\$ 300	N	N
Violate condition of Nuisance Deer Removal Permit	Rule 4-5(b)	\$ 150	\$ 300	N	N
Violate condition of Nuisance Canadian Geese Removal Permit	Rule 4-5(c)	\$ 150	\$ 300	N	N
Violate condition of Sustenance Permit	Rule 4-6	\$ 150	\$ 300	N	N
Violate Deer Permit firearm restriction	Rule 4-7(a)(1)	\$ 300	\$ 600	N	N
Violate deer archery regulations	Rule 4-7(a)(2)	\$ 300	\$ 600	N	N
Harvest deer with a firearm during an archery season	Rule 4-7(a)(2)(C)	\$ 750	\$ 1,500	Y	N
Possess firearm while hunting deer during archery season	Rule 4-7(a)(2)(D)	\$ 300	\$ 600	N	N
Violate blaze orange requirement	Rule 4-7(a)(4)	\$ 300	\$ 600	N	N
Huting deer with the aid of a dog	Rule 4-7(a)(5)	\$ 150	\$ 300	N	N
Failure to attach/retain carcass tag/information	Rule 4-7(a)(6)	\$ 75	\$ 150	N	N
Designated hunter exceeding deer allowance	Rule 4-7(a)(7)	\$ 300	\$ 600	N	N
Failure to comply with deer registration requirement- deer harvested by firearm	Rule 4-7(a)(8)(a)	\$ 75	\$ 150	N	N
Failure to comply with deer registration requirement- harvested by bow and arrow/ cross bow/muzzleloader	Rule 4-7(a)(8)(b)	\$ 75	\$ 150	N	N
Take/pursue/Injure/Harass small game in nest/den or remove eggs/young	Rule 4-8	\$ 300	\$ 600	Y	N
Hunt small game birds with anything other than an air rifle/shotgun/bow and arrow	Rule 4-8(a)	\$ 75	\$ 150	N	N
Violate small game firearm restriction	Rule 4-8(a)(1)	\$ 300	\$ 600	N	N
Violate small game bow and arrow restriction	Rule 4-8(a)(2)	\$ 300	\$ 600	N	N
Hunt turkey out of season	Rule 4-9	\$ 150	\$ 300	N	N
Hunt turkey without a permit	Rule 4-9	\$ 150	\$ 300	N	N
Possess live waterfowl	Rule 4-10	\$ 150	\$ 300	N	N
Take waterfowl with a trap, net and/or fishhook	Rule 4-10(a)	\$ 150	\$ 300	N	N
Violate waterfowl firearm restriction	Rule 4-10(a)(1)	\$ 150	\$ 300	N	N
Violate waterfowl bow and arrow restrictions	Rule 4-10(a)(2)	\$ 150	\$ 300	N	N
Use electronic call to hunt waterfowl	Rule 4-10(a)(3)	\$ 150	\$ 300	N	N
Drive/rally/chase waterfowl with motorized conveyance	Rule 4-10(a)(4)	\$ 150	\$ 300	N	N
Place decoy in water more than one (1) hour before opening of hunt	Rule 4-10(a)(6)(A)	\$ 75	\$ 150	N	N
Leave decoys in water more than twenty (20) minutes after close of hunt	Rule 4-10(a)(6)(B)	\$ 75	\$ 150	N	N
Establish waterfowl hunting blind seven (7) days prior to or after the season	Rule 4-10(b)	\$ 75	\$ 150	N	N

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Hunt waterfowl in open water	Rule 4-10(c)	\$ 75	\$ 150	N	N
Hunt waterfowl from moving motorboat	Rule 4-10(c)	\$ 75	\$ 150	N	N
Exceed trap/snare limit	Rule 4-11	\$ 75	\$ 150	N	N
Trap with prohibited trap/snare	Rule 4-11(a)	\$ 150	\$ 300	N	N
Trap with any leg hold dry set trap larger than a number four (4)	Rule 4-11(a)(1)	\$ 150	\$ 300	N	N
Trap with any leg hold dry set trap larger than a number five (5)	Rule 4-11(a)(2)	\$ 150	\$ 300	N	N
Trap within twenty-five (25) feet of sight-exposed bait	Rule 4-11(a)(3)	\$ 150	\$ 300	N	N
Violate trap/snare marking requirement	Rule 4-11(a)(4)	\$ 150	\$ 300	N	N
Take mink or muskrat by means other than trapping/snaring	Rule 4-11(a)(5)	\$ 150	\$ 300	N	N
Use trap to take wildlife not specified as furbearers	Rule 4-11(a)(6)	\$ 150	\$ 300	N	N
Possess unauthorized trap/snare	Rule 4-11(a)(7)	\$ 150	\$ 300	N	N
Violate small game firearm restriction	Rule 4-11(a)(8)	\$ 150	\$ 300	N	N
Violate small game bow and arrow restriction	Rule 4-11(a)(9)(A)	\$ 150	\$ 300	N	N
Violate set and placement restriction when furbearer trapping	Rule 4-11(b)	\$ 150	\$ 300	N	N
Fail to tend trap as required	Rule 4-11(c)	\$ 150	\$ 300	N	N
Illegal use of dog to hunt	Rule 4-11(d)	\$ 150	\$ 300	N	N
Hunting from a motor vehicle without permission	Rule 4-11(e)	\$ 150	\$ 300	N	N
Violate Dog Training Permit requirement	Rule 4-12	\$ 150	\$ 300	N	N
Erect permanent tree stand on land owned by the Nation	Rule 5-1	\$ 150	\$ 300	N	N
Failure to mark tree stand as required	Rule 5-3	\$ 150	\$ 300	N	N
Failure to mark blind as required	Rule 6-1	\$ 150	\$ 300	N	N
Failure to have 360 degrees of visible blaze orange on the blind when occupied during the deer gun/muzzleloading season	Rule 6-2	\$ 150	\$ 300	N	N
Hunting with/over prohibited bait material	Rule 7-1(a)	\$ 150	\$ 300	N	N
Take/Kill endangered/threatened/protected species	Rule 8-1	\$ 600	\$ 1,200	N	N
Damage/Tamper with nest/egg of endangered/threatened/protected species	Rule 8-1	\$ 600	\$ 1,200	N	N
Failure to tag carcass as required	Rule 9-1	\$ 150	\$ 300	N	N
Violate wildlife registration requirement	Rule 9-2	\$ 150	\$ 300	N	N
Violate wildlife transportation requirement	Rule 9-3	\$ 150	\$ 300	N	N
Leaving fishing line unattended	Rule 10-8	\$ 75	\$ 150	N	N
Fish during closed season	Rule 10-1	\$ 75	\$ 150	N	N
Discharge of a firearm into water	Rule 10-4	\$ 150	\$ 300	N	N
Using ice fishing hole larger than ten inches (10")	Rule 10-7	\$ 150	\$ 300	N	N
Minor hunting with a handgun without required adult supervision	Rule 11-1(a)	\$ 600	\$ 1,200	Y	N
Responsible adult knowingly allowing minor to hunt without supervision	Rule 11-1(a)	\$ 600	\$ 1,200	Y	N

ATTACHMENT B - FINE AND PENALTY SCHEDULE

Violation	Reference	Fine		Other	
		1st Violation	Subsequent Violation	Must Appear	Restitution Possible
Exceed bag/possession limit/size limit	Rule 11-1(c)	\$ 300	\$ 600	Y	Y
Possess live wildlife without required authorization	Rule 11-1(d)	\$ 300	\$ 600	N	N
Hunt species for which hunting season not established	Rule 11-1(e)	\$ 600	\$ 1,200	Y	Y
Hunt wildlife in a refuge	Rule 11-1(e)	\$ 600	\$ 1,200	Y	Y
Fish/trap/hunt small game/furbearers/waterfowl during closed season	Rule 11-1(e)	\$ 300	\$ 600	N	N
Hunt deer during closed season	Rule 11-1(e)	\$ 1,500	\$ 3,000	Y	Y
Hunt before or after hours	Rule 11-1(f)	\$ 300	\$ 600	N	N
Leave or deposit trash or fish parts on lands/shores of Oneida Tribal waters, and waters	Rule 11-1(g)	\$ 150	\$ 300	N	N
Empty receptacles containing bait into reservation waters	Rule 11-1(g)	\$ 150	\$ 300	N	N
Shoot frogs and turtles with a firearm/bow/crossbow	Rule 11-1(h)	\$ 300	\$ 600	Y	Y
Shining while in possession of a firearm/bow/crossbow	Rule 11-1(i)	\$ 300	\$ 600	N	N
Hunting party larger than ten (10) people (fine for each member within the group)	Rule 11-1(j)	\$ 150	\$ 300	N	N
Damaging property/agricultural crops/restoration areas	Rule 11-1(j)	\$ 600	\$ 1,200	Y	Y
Penalties	Reference	1st Violation		Subsequent Violation	
Any named violation contained in this attachment may subject the violator to license and/or permit suspension, revocation and/or future ineligibility	Law §406.10-2	For a period not to exceed one (1) year.		For a period not to exceed two (2) years with a reinstatement fee of \$75.	
For each named potential violation contained in this attachment, it is in the Oneida Conservation Wardens and/or the Oneida Police Officers full discretion to confiscate any equipment and/or wildlife with the return of the same at the discretion of ERB	Law §406.10-3	N/A		N/A	
For each named potential violation contained in this attachment, it is in the Environmental Resource Board's full discretion to order restitution. Restitution may be appropriate for damages, injury, or in other circumstances.		N/A		N/A	

ATTACHMENT C - WILDLIFE ASSESSMENT SCHEDULE	
Wildlife	Civil
	Assessment
Any Endangered or Threatened Species	\$ 900
Moose, Fisher, or Sandhill Crane	\$ 300
Bear, Cougar or Timberwolf	\$ 400
Wild Turkey or Wild Swan	\$ 200
Coyote, Raccoon or Mink	\$ 60
Deer	\$ 400
Ruffed Grouse, Spruce Hen, Wild Duck, Coot, or Wild Goose	\$ 50
Pheasant, Hungarian Partridge, Quail, Rail, Wilson's Snipe, Woodcock or Shorebirds, or Songbird	\$ 50
Muskrat, Rabbit or Squirrel	\$ 20
Muskellunge or Lake Sturgeon	\$ 60
Largemouth or Smallmouth Bass	\$ 40
Brook, Rainbow, Brown or Steelhead Trout	\$ 40
Oneida Tribal Members Only	\$ 20
All Other Wildlife	\$ 20

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: (920) 869-2214

Oneida, WI 54155



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

MARLENE GARVEY
RICHARD BAIRD
TED HAWK

AL MANDERS
TOM OUDENHOVEN
GERALD JORDAN

MEGAN WHITE
NICOLE STEEBER
SHAWN SKENANDORE

To: Legislative Operating Committee
From: Minnie Garvey, Chairwoman, Environmental Resource Board (ERB)
Re: Statement of Approval for Hunting, Fishing, Trapping Regulations

As Chairwoman of the Environmental Resource Board, I am approving the final draft of the Hunting, Fishing, and Trapping Regulations. This approval follows the Public Meeting that was held April 21, 2017 at the Norbert Hill Center. The ERB approved the basic draft at their April 6, 2017 meeting and have seen no significant changes to the proposal since that time.

Regards,

Marlene (Minnie) Garvey

Minnie Garvey
Chair-woman, ERB

Environmental Health & Safety Division



To: Legislative Operating Committee
From: Shad L. Webster, Natural Resources Director
Date: May 2, 2017
Re: Hunting, Fishing, & Trapping Law Amendments

As the Natural Resources Director of the Oneida Conservation Department (OCD), I am approving the rule handbook. This approval is in direct response to the Oneida Business Committee adopting the Hunting, Fishing, & Trapping Law pursuant to the established resolution BC-01-25-17D and effective on April 25, 2017.

 5/2/17
Shad L. Webster, Natural Resources Director Date

Summary Report for Hunting, Fishing and Trapping Rules

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Hunting, Fishing and Trapping Handbook

Name of law being interpreted: Hunting, Fishing and Trapping

Rule Number: 1-13

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Details on regulations of Hunting, Fishing, and Trapping that are no longer in the Hunting, Fishing, and Trapping Law. Address issues of seasons, bag limits, permits, harvests, and licenses for hunting on Oneida Nation. Approve rules which are jointly adopted by the Environmental Resource Board and Conservation Department. Ensure safe hunting, proper natural resources management, and protection of species. Define assessments for unlawful harvesting and other violations of the Hunting, Fishing, and Trapping Law.

Statement of Effect: See Attached.

Financial Analysis: See Attached.



Statement of Effect

Hunting, Fishing and Trapping Rule Handbook

Summary

The Hunting, Fishing and Trapping Rule Handbook details information related to harvests, limits, seasons, licenses and other details which further support the Hunting, Fishing and Trapping law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Hunting, Fishing and Trapping law (“the Law”) delegates joint rulemaking authority to the Environmental Resource Board and the Conservation Department pursuant to the Administrative Rulemaking law. [see *Hunting, Fishing and Trapping law section 406.5-1*]. The Law describes the areas in which the Environmental Resource Board and the Conservation Department are delegated rulemaking authority. [see *Hunting, Fishing and Trapping law section 406.5-2(a) through 406.5-2(n), 406.7-4, 406.7-5*].

The Hunting, Fishing and Trapping Rule Handbook (“the Rule Handbook”) contains rules one (1) through thirteen (13) for the Law, as well as attached license and permit schedule, fine and penalty schedule, and animal assessment schedule. The Rule Handbook addresses information related to harvests, limits, seasons, licenses and other details which further support the Hunting, Fishing and Trapping law.

Conclusion

There are no legal bars to adopting the Hunting, Fishing and Trapping Rule Handbook.

Financial Analysis for Hunting, Fishing, and Trapping Handbook

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	Regular job duties	\$0
Office	Regular job duties	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	Ongoing, but negligible as considered part of regular job duties.	\$0
Other, please explain	N/A	\$0
Total Annual Cost		\$0

NOTICE OF
PUBLIC MEETING

TO BE HELD

Friday, April 21 at 12:15 pm

IN THE

OBC Conference Room

2nd Floor Norbert Hill Center

N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Environmental Resource Board and the Conservation Department are hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

**TOPIC: Hunting, Fishing and
Trapping Rule Handbook**

This is a proposal to adopt rules which would:

- ◆ List the detailed and specific regulations of Hunting, Fishing, and Trapping that are no longer in the Hunting, Fishing, and Trapping Law.
- ◆ Address issues of seasons, bag limits, permits, harvests, and licenses for hunting on Oneida Nation.
- ◆ Approve rules which are jointly adopted by the Environmental Resource Board and Conservation Department.
- ◆ Ensure safe hunting, proper natural resources management, and protection of species.
- ◆ Define assessments for unlawful harvesting and other violations of the Hunting, Fishing, and Trapping Law.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

**PUBLIC COMMENT PERIOD
OPEN UNTIL April 28, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Environmental Resource Board by U.S. mail, interoffice mail, e-mail or fax.

**Environmental Resource Board
3759 W. Mason St., Suite 6
schuber@oneidanation.org
920-496-5362**



Title 4. Environment and Natural Resources – Chapter 406

HUNTING, FISHING and TRAPPING

Rule # 1-13 – Hunting, Fishing and Trapping Handbook

- I. Purpose, Authority, Adoption, Amendment and Repeal
- II. Definitions
- III. General Requirements
- IV. Available Permits
- V. Tree Stands
- VI. Blinds
- VII. Baiting
- VIII. Endangered, Threatened and Protected Species
- IX. Possession, Registration and Transportation of Carcasses
- X. Fishing
- XI. General Regulations
- XII. Health Advisory
- XIII. Enforcement

I. Purpose, Authority, Adoption, Amendment and Repeal

1-1. Purpose. The purpose for these rules is to further detail the information related to harvests, limits, seasons, licenses, and other details to further support the Hunting, Fishing and Trapping law.

1-2. Authority. The Hunting, Fishing and Trapping law delegated the Environmental Resource Board and Conservation Department joint rulemaking authority pursuant to the Administrative Rulemaking law.

1-3. These rules were jointly adopted by the Environmental Resource Board and Conservation Department in accordance with the procedures of the Administrative Rulemaking law.

1-4. These rules may be amended or repealed by the joint approval of the Environmental Resource Board and Conservation Department pursuant to the procedures set out in the Administrative Rulemaking law. For the purpose of future amendments to these rules, each article is a separate rule and may be amended as such.

1-5. Should a provision of these rules or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1-6. In the event of a conflict between a provision of these rules and a provision of another rule, internal policy, procedure, or other regulation, the provisions of these rules control.

1-7. These rules supersede all prior rules, regulations, internal policies or other requirements relating to the Hunting, Fishing and Trapping law.

1-8. This article I applies to each subsequent rule listed herein.

II. Definitions

2-1. This article governs the definitions of words and phrases used within this Handbook. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Antlered Deer” means a deer which has either two (2) antlers with two (2) or more points on each antler or one (1) antler with four (4) or more points where each point must

measure one (1) inch in length from the main beam and, at a minimum, one (1) antler must be three (3) or more inches in length.

(b) "Baited Area" means an area within a one hundred (100) yard radius from any placed bait material, provided that once bait material is placed, the area remains a baited area for a period of ten (10) calendar days from the date the bait material is either fully consumed or removed.

(c) "Furbearer" means wildlife taken primarily for the sale of the said wildlife's pelt and includes, but is not limited to, mink, muskrat, beaver, weasel, fox, coyote, bobcat, badger and raccoon.

(d) "Game Fish" means all species belonging to the trout, pike, catfish, bullhead, sunfish (including blue gill and crappie), bass, and perch families of fish.

(e) "Harass" means to shoot at, disturb, worry, rally, concentrate, harry, chase, drive, herd, or torment wildlife.

(f) "Open Water" means any water beyond a natural growth of vegetation rooted to the bottom and extending above the water surface of such height as to offer whole or partial concealment of the hunter.

(g) "Permanent Tree Stand" means any manufactured or constructed platform fastened by nails, screws, or other means deemed permanently fixed, for the purpose of allowing a person to view, observe, or hunt wild animals.

(h) "Possession Limit" means the maximum number of a particular wildlife species that may be in the possession of a person who has hunted, fished, or trapped two (2) days or more.

(i) "Raptor" means all hawks, owls, eagles, falcons, and osprey.

(j) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and includes any such weapon which may be readily restored to fire a fixed cartridge.

(k) "Semi-permanent Tree Stand" means any manufactured or constructed platform fastened, strapped, chained, or otherwise attached to a tree, for the purpose of allowing a person to view, observe or hunt wild animals.

(l) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (bird shot) or a single projectile for each pull of the trigger and includes any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) "Sight Exposed Bait" means any bones, meat or viscera of an animal, bird, or fish with or without skin, hide or feathers which can be seen from above the bait.

(n) "Size Limit" means the specific minimum length and/or maximum length in inches of a species of fish that may be possessed legally.

(o) "Small Game" includes, but is not limited to the following: geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; commonly known as rails, coots, mud hens, and gallinule; commonly known as snipe and woodcock; commonly

known as grouse, pheasants, partridges, and quail; cottontail rabbit, and gray and fox squirrel.

(p) "Specified Area" means areas where the taking of fish and wildlife is restricted to the specifications set forth by the law, rule or Environmental Resource Board resolutions.

(q) "Unprotected Species" means species which can be hunted year round without limit and includes: opossum, skunk, weasel, mice, and all other animals not mentioned in the Hunting, Fishing and Trapping law and these rules.

(r) "Waterfowl" means any wild species of geese, brants, or ducks.

(s) "Wet Set" or "Water Set" means a trap which is staked in such a manner as to permit the trap or trapped animal to reach water at any point.

III. General Requirements

3-1. *License and Permit on Person.* All persons shall have in his/her possession, while hunting, fishing or trapping within the exterior boundaries of the reservation, a valid Oneida sportsman license issued by the Department allowing him/her to hunt, fish, or trap on the reservation and, if the action also requires a permit, the applicable permit also.

3-2. *Limit on Non-Tribal Member Licenses.* The Department may not issue more than thirty-five (35) Oneida sportsman licenses to Non-Tribal Members in any calendar year.

3-3. *License Application Deadlines and Expirations.* Tribal members, descendants, affiliates of other tribes and Tribal member's spouses and/or dependents may apply for a sportsman license at any time; the application deadline for a non-member sportsman license is the third (3rd) Monday of August. Sportsman licenses expire each year on August 31st.

3-4. *License and Permit Availability and Schedule.* Oneida sportsman licenses and permits may be obtained from the Conservation Department, which is located at N8047 County Road U.

(a) *Permit Availability.* Nuisance permits, sustenance permits, ceremonial permits and dog training permits are only available to Tribal members and Tribal members shall apply for each of these permits separately from the Oneida sportsman license. Turkey permits are available to all persons eligible for an Oneida sportsman license that is not limited to fishing, provided that licensees shall apply for turkey permits separately from the Oneida sportsman license.

(b) *License and Permit Schedule.* The license and permit schedule is included in these rules as Attachment A.

3-5. *Denial of a License or Permit.* An application for a sportsman license or permit may be denied according to section 406.6-7 of the Hunting, Fishing and Trapping law.

3-6. Applicants born on or after January 1, 1973 shall present a hunter's education certification prior to issuance of any sportsman license.

IV. Available Permits

4-1. *Comprehensive List of Available Permits.* Subject to the requirements provided in the Hunting, Fishing, Trapping law and these rules, the Department may issue the following permits, provided that in order to be eligible for a permit, a full sportsman license is required; a fishing only sportsman license is not sufficient:

(a) Tribal Member Ceremonial/Feast Permit;

(b) Disabled Permit;

- (c) Nuisance Permit;
- (d) Sustenance Permit;
- (e) Deer Gun Permit;
- (f) Deer Gun Hunter's Choice Permit;
- (g) Deer Bow Permit;
- (h) Small Game Permit;
- (i) Turkey Permit;
- (j) Waterfowl Permit;
- (k) Furbearer Permit;
- (l) Dog Hunting Permit; and
- (m) Found Carcass Permit.

4-2. *Responsibility to Set Seasons and Limits.* The Environmental Resource Board, with input from the Conservation Department, shall establish, annually by written Environmental Resource Board resolution, by no later than the end of March each calendar year, the following and, in doing so shall consider the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest:

- (a) Any bag limits applicable to various permits.
- (b) Any possession limits applicable to various permits.
- (c) Season opening and closing dates for each permit, provided that:
 - (1) Bow deer season may not open before September 1st and may not close any later than January 31st.
 - (2) Muzzleloading deer season shall open the calendar day following the close of the deer gun season and may not close any later than the first Sunday in January.
 - (3) The season for small game may not begin before September 1st or close later than March 31st.
 - (4) The season for waterfowl may not begin before September 1st or close later than December 31st.
 - (5) The seasons for furbearers may not begin before October 1st or close later than April 1st.
- (d) Any hunting hour restrictions that may apply to a season, provided that if setting hunting hours, such hours may not permit hunting prior to thirty (30) minutes before sunrise or extend beyond fifteen (15) minutes after sunset.
- (e) The number of carcass tags that may be issued pursuant to each applicable permit, which may include limitations based on age, sex, size, species or other factors established by the Environmental Resource Board. Daily bag and possession limits pursuant to a small game permit may not exceed a harvest of ten (10) wildlife of each species per day.
- (f) Fish minimum lengths and slot sizes for designated fish species.
- (g) Which areas are designated as available for hunting and trapping as indicated on the Oneida Nation Hunting Map. If the Nation acquires additional properties eligible for hunting and trapping after the initial annual Oneida Nation Hunting Map has been

approved, the Environmental Resource Board may adopt a revised Oneida Nation Hunting Map by written resolution. Upon the setting of such designated areas, the Department shall mark all properties not open for hunting and trapping.

(h) Any designated protected waters in which fishing is not permitted.

4-3. *Tribal Member Ceremonial/Feast Permit.* In addition to the requirement in section 406.6-2 of the Hunting, Fishing and Trapping law, the following requirements also apply:

(a) A ceremonial/feast permit may not be effective for a period longer than ten (10) calendar days and may only be issued between the third (3rd) Saturday of September and the last day of December for any calendar year .

(b) The Department shall indicate on each permit how much wildlife may be taken pursuant to the permit and which areas are open for the ceremonial/feast hunt.

(c) Permittees shall register any deer harvested pursuant to a ceremonial/feast permit within twenty-four (24) hours of the harvest.

(d) A ceremonial/feast permit issued for harvested deer may only be issued for antlerless deer; it is unlawful to harvest an antlered deer under a ceremonial/feast permit.

4-4. *Disabled Permit.* In addition to the requirements and limitations regarding disabled permits included in section 406.6-6 of the Hunting, Fishing and Trapping law, a disabled hunter permit also requires:

(a) That when hunting from the roadway, the roadway is part of a county highway, a town highway or any other highway that is not part of a street or of a state trunk or federal highway.

(b) The vehicle is located off of the roadway and is not in violation of any applicable prohibition or restriction that applies to parking, stopping or standing of the vehicle.

(c) The holder of the permit is not as a designated hunter.

(d) The holder of the permit has obtained permission from any person who is the owner or lessee of private property across or on to which the holder of the permit intends to discharge a weapon.

(e) The vehicle bears disabled plates or displays a sign that is at least 11 inches square on which is conspicuously written "disabled hunter".

(f) The holder of the permit discharges the weapon away from and not across or parallel to the roadway.

4-5. *Nuisance Animal Removal Permit.* For each nuisance animal removal permit, based on the circumstances and extent of the nuisance, the Department shall provide the amount of wildlife that the permittee may take pursuant to the permit and may limit the amount based on age, sex, size, species or other relevant factors established by the Department; the Department may also establish the prescribed manner of taking required by the permit. In addition to the requirements in section 406.8 of the Hunting, Fishing and Trapping law, the following also apply:

(a) *Assistance by the Department.* The Department may assist the permittee in taking and/or trapping a nuisance animal if:

(1) Extraordinary damage is occurring, where the determination of extraordinary damage is in the Department's best discretion.

(2) The permittee has demonstrated an inability to harvest an adequate number of the nuisance animals and damage to the permittee's property in the current calendar exceeds, or is likely to exceed, \$5,000.00.

(b) *Conditions to Nuisance Deer Removal Permits.* The following conditions apply to nuisance deer removal permits:

(1) Permittees and permittees' agents may hunt deer only during the period from thirty (30) minutes before sunrise to fifteen (15) minutes after sunset during the closed deer gun season. During the deer gun season permittees and permittees' agents shall comply with any restrictions regarding shooting hours.

(2) No deer may be harvested pursuant to a nuisance deer removal permit within the twenty-four (24) hour period prior to the opening of gun deer season.

(3) The weapon restrictions provided in article 4-7(a)(1) and (2) apply to nuisance deer removal permits.

(4) If the permittee and/or the permittee's agent does not fulfill fifty percent (50%) or more of the nuisance deer removal permit's quota in the initial thirty (30) calendar days for which the permit is effective, the Department may withdraw the permit.

(5) Unless specifically exempt by the Department in the permit, only deer without antlers or with antlers less than three (3) inches in length may be harvested pursuant to a nuisance deer removal permit.

(c) *Conditions to Nuisance Canadian Geese Removal Permits.* The following conditions apply to nuisance Canadian geese removal permits:

(1) Permittees and/or permittees' agents may retain any Canadian goose carcasses harvested pursuant to a nuisance Canadian geese removal permit, provided that permittees' agents may only retain carcasses declined by the original permittee.

(2) The weapon restrictions provided in article 4-10(a) apply to nuisance Canadian geese removal permits.

(3) If during open goose season, the Department may not issue an applicant a nuisance Canadian geese removal permit until all of the applicant's goose carcass tags under the goose permit have been filled.

4-6. *Sustenance Permits.* The Department may issue sustenance permits to Tribal Members who are in need of nourishment which allows the permittee to harvest one (1) additional antlerless deer throughout the course of the open deer bow, gun or muzzleloader seasons. Only one (1) sustenance permit may be issued per household. Permittees may designate a hunter to hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law. Permittees shall register any deer harvested pursuant to a sustenance permit within twenty-four (24) hours of the harvest. The weapon restrictions provided in article 4-7(a)(1), (2) and (3) below apply to sustenance permits.

241 4-7. *Deer Permits.* This article applies to deer gun, deer bow and deer hunter's choice permits.

242 (a) *Restrictions on Deer Permits.*

243 (1) *Firearms Restrictions.* No person may hunt deer with:

244 (A) A rifle, with a shot gun smaller than twenty (20) gauge or larger than
245 ten (10) gauge, or with a muzzleloader smaller than .40 caliber.

246 (B) Any handgun which is loaded with caliber chambered for
247 commercially manufactured center fire cartridge which produce a muzzle
248 velocity of nine hundred fifty (950) feet per second and no more than two
249 thousand two hundred (2,200) feet per second and has a barrel length of
250 five (5) inches measured from the muzzle to the firing pin with the action
251 closed. Hunters using handguns for deer hunting may possess other
252 firearms legal for the zone in which they are hunting deer.

253 (2) *Deer Archery Season Regulations.*

254 (A) No person may hunt deer with a bow having a pull strength less than
255 thirty-five (35) pounds or using an arrow that does not have a broadhead.

256 (B) No person may hunt deer with a crossbow, unless the crossbow:

257 (i) Is fired from the shoulder;

258 (ii) Has a minimum draw weight of one hundred (100) pounds;

259 (iii) Has stock of not less than thirty (30) inches in length;

260 (iv) Is used with arrows or bolts of not less than fourteen (14)
261 inches in length with a broadhead; and

262 (v) Has a working safety.

263 (C) No person may possess a deer harvested with a firearm during an
264 archery only deer hunting season.

265 (D) No person hunting deer under the authority of an archery deer permit
266 may have a firearm in his/her possession unless participating in
267 muzzleloading season or using a ceremonial/feast permit.

268 (E) Group hunting is not permitted during deer archery hunting seasons.

269 (3) *Archery Hunting During Deer Gun Season.* A person may hunt deer with
270 archery equipment during deer gun season and shall tag any such harvested deer
271 with either a deer gun or deer bow tag, provided that the blaze orange
272 requirements in this article apply.

273 (4) *Blaze Orange Required.* During the gun deer season and muzzleloading
274 season, no person shall hunt any wildlife, except waterfowl, unless at least fifty
275 percent (50%) of the person's outer clothing above the waist is colored
276 blaze/hunter orange.

277 (5) *Hunting Deer with Dogs Prohibited.* No person may hunt deer with the aid of
278 a dog(s).

279 (6) *Removal and Retention of Carcass Tags.* Permittees that harvest deer shall
280 ensure that deer carcass tags remain attached to the deer until the carcass is
281 butchered or processed for consumption and, once the carcass tag is removed
282 from the deer, shall retain the carcass tag until all of the meat from the subject
283 carcass has been consumed. A person who receives meat from another as a gift is
284 not required to possess the carcass tag, provided that the permittee gifting the

meat shall provide the receiver with the carcass tag number pursuant to which the meat was harvested.

(7) *Designated Hunters.* Designated deer hunters may only take antlerless deer and, regardless of the number of tags issued to the original permittee, may fill a maximum of two (2) deer carcass tags on behalf of the original permittee.

(8) *Registration.*

(A) Permittees shall register deer harvested by a firearm during the gun deer season no later than 4:00 p.m. the day after the close of the gun deer season.

(B) Permittees shall register all deer harvested by a bow and arrow, cross bow or muzzleloader no later than 4:00 p.m. on the third (3rd) day after the deer was harvested.

(b) *Deer Hunter's Choice Permits.* Deer hunter's choice permits may be issued to Tribal Member elders and first time graduates of a hunter safety program. A deer hunters choice permit allows the permittee to harvest an additional antlerless deer during the gun season and, if the tag has not been filled, extending into the deer muzzleloading season. Permittees may designate a hunter to hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law.

4-8. *Small Game Permit.* No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(a) *Permissible Methods.* The hunting of small game birds is restricted to the use of an air rifle, shotgun or bow and arrow. The hunting of small game mammals is restricted to the use of an air rifle, shotgun, rifle, or bow and arrow.

(1) *Firearm Restrictions.* No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges.

(C) Rifles or handguns may not be used for hunting birds.

(D) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(E) While possessing shot shells larger than two (2) shot or while possessing slugs, except that during deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting small game.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(2) *Bow and Arrow Restrictions.* No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Use of Dogs.* Dogs may be used while hunting small game.

4-9. *Turkey Permit.* An issued turkey permit authorizes the permittee to hunt turkey during both the spring and fall seasons; a separate permit is not required for each season. Hunting dogs may be used during the fall turkey season. Designated hunters named pursuant to a turkey permit and based on the requirements of the Hunting, Fishing and Trapping law in section 406.9-4 may fill a maximum of two (2) turkey tags for the original permittee, regardless of the number of tags issued to the original permittee.

4-10. *Waterfowl Permit.* An issued waterfowl permit authorizes the permittee to hunt waterfowl during the set season, but does not authorize permittees to possess live waterfowl; permittees shall kill all waterfowl immediately once possession is gained.

(a) *Permissible Methods.* No person may take waterfowl with a trap, net and/or fishhook.

(1) *Firearms Restrictions.* No person may hunt waterfowl:

(A) With a shotgun larger than ten (10) gauge; duck plugs are not required.

(B) With a rifle of any type.

(C) With a shotgun with a barrel length less than eighteen (18) inches.

(D) With a handgun of any type.

(E) While in possession of lead shot.

(2) *Bow and Arrow Restrictions.* No person may hunt waterfowl:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(3) *Migratory Bird Calls.* No person may use electronic calls of any type to hunt waterfowl.

(4) *Hazing.* No person may drive, rally or chase waterfowl with any motorized conveyance in order to force the waterfowl into hunters' range.

(5) *Live Decoys.* No person may hunt waterfowl with the aid of live decoys. All live, tame or captive waterfowl shall be removed for a period of ten (10) consecutive days prior to hunting and confined within an enclosure which substantially reduces the audibility of the waterfowls' calls and completely conceals the captive waterfowl from the sight of any non-captive waterfowl.

(6) *Decoys.* No person hunting waterfowl may place decoys beyond two hundred (200) feet from the cover or blind in which the person is located. No person hunting waterfowl may:

(A) Place decoys in the water prior to one (1) hour before opening of waterfowl hunting time.

(B) Leave decoys in the water more than twenty (20) minutes after the close of waterfowl hunting time.

(b) *Blind Restrictions.* No person hunting waterfowl may establish a waterfowl hunting blind, including the bed of any navigable lake, reservoir, pond or stream, prior to seven (7) days before the waterfowl hunting season or leave it established beyond seven (7) days after the close of the waterfowl hunting season.

(c) *Open Water Hunting.* Unless pursuing a crippled waterfowl, waterfowl may not be hunting from a moving watercraft. If a motorized watercraft is used to pursue a crippled waterfowl into open water, the motor must be shut off and all forward movement of the boat must cease before loading and shooting at the crippled waterfowl.

4-11. *Furbearer Permit.* A furbearer permit authorizes Tribal members to operate an unlimited number of traps or snares in any combination and authorizes spouses or dependents of Tribal members or persons affiliated with another tribe to operate a maximum of one hundred and fifty (150) traps or snares in any combination.

(a) *Permissible Methods.* No person may:

(1) Trap with any leg hold dry set trap larger than a number four (4).

(2) Trap with any leg hold wet set trap larger than a number five (5).

(3) Trap within twenty-five (25) feet of any sight-exposed bait.

(4) Set any trap or snare unless a metal tag is attached, stamped, or engraved legibly upon the trap or snare which has the owner's enrollment number and/or the name, address, and phone number.

(5) Take mink or muskrat by means other than trapping or snaring.

(6) Use any traps to take any wildlife not specified as furbearers.

(7) Possess any trap for the purpose of trapping furbearers other than a leg hold trap, live trap, conibear trap, snare or colony trap.

(8) *Firearm Restrictions.* No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges, provided that a permittee may use up to a .223 caliber for fox and coyote hunting.

(C) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(D) While possessing shot shells larger than two (2) shot or while possessing slugs, except that:

(i) During deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting furbearer; and

(ii) A buckshot may be used for hunting fox and coyote.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(9) *Bow and Arrow Restrictions.* No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Set and Placement Restrictions.* No person trapping furbearers may:

(1) Operate trap sets which permit the trapped animal to reach water, except during the operation of a wet set or colony trap during applicable furbearer seasons.

(2) Set any trap on any perch more than three (3) feet above the ground.

(c) *Trap Tending.* Permittees shall check all dry set traps at least once every twenty-four (24) hours and shall and remove any wildlife trapped therein. Permittees shall check all wet set traps at least once every four (4) calendar days and shall remove any wildlife trapped therein.

(d) *Use of Dogs.* Dogs may be used while hunting raccoon, coyote and fox.

(e) *Permission to Hunt from a Motor Vehicle.* Permittees may request permission to hunt furbearers from a motor vehicle; absent permission from the Department it is not permissible to hunt, kill or harass furbearers from any type of motor vehicle.

4-12. *Dog Training Permit.* The Department may issue dog training permits to persons who wish to possess and release small game birds for dog training purposes. The permit shall contain requirements such as the location where the birds will be released and, if applicable, the maximum number of birds that may be released.

(a) Prior to being released, the permittee shall mark and identify all birds to be released by fixing a leg band to the bird's leg which identifies the dog training permit number.

(b) The following small game birds may be released pursuant to a dog training permit:

(1) Pheasant;

(2) Grey partridge;

(3) Red Legged Partridge;

(4) Bob White Quail;

(5) Chukar Partridge; and

(6) Pharo Pigeons.

(c) The approval of the Environmental Resource Board is required, prior to release, should a permittee wish to release a small game bird that is not included in the list of authorized small game birds provided in article 4-12(b).

4-13. *Found Carcass Permit.* A found carcass permit is available for any wildlife found injured and/or killed by any non-hunting related cause. To obtain a Found Carcass Permit, the requestor shall contact the Department and provide the location of the found carcass. After inspecting the condition of the wildlife, the Department shall either issue the requestor a Found Carcass Permit or deny the permit and take the carcass into possession.

V. Tree Stands

5-1. *Permanent Tree Stands Prohibited on the Nation's Lands.* Permanent tree stands may not be erected on land owned by the Nation.

5-2. *Semi-Permanent Tree Stands.* Semi-permanent tree stands may be put, but not sooner than two (2) weeks before the archery season opens and shall be removed no later than April 1st.

5-3. *Tree Stand Owner Information.* All tree stands must be stamped with the owner's enrollment number and/or name, address and phone number for identification.

VI. Blinds

6-1. If a blind is constructed with manufactured materials, such blind requires identification either with a tag affixed to the blind or engraved directly into the blind which contains the owner's enrollment number and/or name, address and phone number for identification.

6-2. During the gun deer season and muzzleloading season, no person shall occupy a blind unless there is three hundred sixty (360) degrees of visible blaze orange on the blind.

VII. Baiting

7-1. Persons may not:

(a) Use bait material, which includes, but is not limited to, liquid or scent, for attracting wildlife:

(1) which contains or, at the time of use, is contained within: honey, bones, fish, meat, solid animal fat, parts of animal carcasses, metal, paper, plastic, glass, wood (other than hollow stumps, or other non-degradable materials);

(2) in excess of ten (10) gallons of bait material in a baited area, provided that, salt and salt blocks are excluded from this restriction.

(b) Hunt waterfowl with the aid of bait other than grain crops left in the field due to normal agricultural practices.

(c) Hunt over bait materials, regardless of whether or not the bait materials were intentionally placed as bait, which do not comply with the requirements of these rules.

VIII. Endangered, Threatened and Protected Species

8-1. Absent a nuisance permit, no person may take or kill any endangered, threatened or otherwise protected species or damage or tamper with the nests or eggs of an endangered, threatened or otherwise protected species on the reservation.

8-2. A federal permit issued by the United States Fish and Wildlife Service is required in order for any Tribal member possess an eagle or any part thereof. Tribal members may request application forms directly from the United States Fish and Wildlife Service, the Department shall also have copies of the application forms available.

IX. Possession, Registration and Transportation of Carcasses

9-1. *Attachment of Carcass Tags.* For wildlife subject to permit that includes carcass tags, upon taking of the wildlife, the permittee shall immediately attach the carcass tag as follows:

Wildlife Species	Required Method of Carcass Tag Attachment
Deer	Attach to antler, ear or hind leg
Goose	Attach to featherless portion of the leg
Turkey	Attach to featherless portion of the leg

9-2. *Wildlife Registration.* Except for deer during deer gun hunting season or where shorter timeframes are provided in these rules, a permittee taking wildlife pursuant to a permit which requires a carcass tag shall register the said wildlife with the Department within three (3) calendar days of the taking. Permittee may register wildlife at the Department or any other registration area designated by the Department. Deer harvested during deer gun hunting season shall be registered by 4 pm the day after close of the firearm season. Deer registration tag should be retained with meat until consumed.

9-3. *Wildlife Transportation.* Wildlife may not be transported by persons that do not possess the required Oneida sportsman license and any applicable permits. A person may only transport his or her own lawfully possessed wildlife.

(a) *Birds.* Permittees shall ensure that, at a minimum, the fully feathered head or one (1) fully feathered wing remains attached to each bird that is transported from the field until the bird reaches the permittees residence or processing location.

(b) *Fish.* While in transportation, all fish must be able to be readily counted. Fish may be dressed, but permittees shall ensure that the body of each fish remains intact while the fish is transported from the water until the fish reaches the permittee's residence or processing location.

(c) *Found Carcasses.* Persons finding wildlife carcasses may not transport said carcasses until such person has applied for and received a Found Carcass Permit from the Department or designee. Permittees shall abide by any requirements of the Found Carcass Permit, including those related to carcass tags and transportation of the carcass.

(d) *Registration Required Prior to Transportation.* Wildlife subject to registration requirements may not be transported off of the reservation until all registration requirements have been satisfied.

(e) *Accompaniment of Wildlife Pending Registration.* Permittees shall accompany all wildlife harvested subject to registration requirements at all times until all registration requirements have been satisfied. No person may knowingly accept for and transport another's wildlife without the valid license and permit holder present. This provision does not apply to authorized enforcement persons who, in the course of their duties, may be required transport seized wildlife.

X. Fishing

10-1. *Seasons.* The fishing season shall be continuous (year-round) unless specific seasons are established in accordance with article 4-2 of these rules. Further, fishing hours are not limited.

10-2. *Possession and Bag Limits.* Persons fishing shall comply with any possession, size and bag limits applicable to fish as established in accordance with article 4-2 of these rules.

10-3. *Fishing Restricted to Authorized Methods.* No person may take or kill fish by any method other than rods, lines and bare hooks, baited fish hooks, nets, spears, use of hands, and bows/arrows, except that bows/arrows may not be used on rough fish. For the purpose of this section, rough fish means carp, all sucker species and sheep head.

10-4. *Firearm Restriction.* No firearms may be used while fishing.

10-5. *Trespass.* No person may fish on private waters without permission from the owner or occupant. No person may fish on Tribal, state, or federal refuge waters or protected waters.

10-6. *Trading of Fish.* All fish caught or taken by any means may be traded, provided that persons shall comply with possession and bag limits at all times, regardless of trading.

10-7. *Ice Fishing.* Ice fishing holes may not be larger than ten inches (10") in diameter. While ice fishing, a person may not use more than four (4) fishing lines at one (1) time.

10-8. *Attending Lines* – Lines may not be left unattended.

XI. General Regulations

11-1. Persons may not:

(a) Hunt with a handgun if under the age of eighteen (18) unless under the immediate supervision of a parent or responsible adult.

(b) Transport, deliver, receive, or offer to deliver or receive for transporting any wildlife or part thereof at any time other than during the open season and three (3) calendar days after.

(c) Exceed daily bag or possession limits, or possess wildlife above or below the size limits established in accordance with article 4-2 of these rules.

(d) Possess any live wildlife unless authorized by the Department.

(e) Hunt species for which hunting seasons are not established, hunt wildlife during the closed season, or hunt wildlife in a refuge/closed area.

(f) Hunt any species more than fifteen (15) minutes after sunset or more than thirty (30) minutes before sunrise during the gun deer season. Except during the gun deer hunting season, coyote, fox, raccoon and unprotected species may be hunted without hunting hour restrictions.

- (g) Leave, deposit, place or throw on the waters, ice, shores of water or upon Tribal land, any empty receptacles containing bait, fish offal, fish carcasses, and/or fish parts.
- (h) Catch, kill or take frogs and turtles except by the following authorized methods: hand, dip net, hook and line, or spear.
- (i) Shine while in possession of a firearm, bow or crossbow.
- (j) Hunt in a party of more than ten (10) persons.
- (k) Possess any firearm unlawfully.

XII. Health Advisory

12-1. Fish caught in Duck Creek, ducks, geese, and other wildlife may contain PCB's. Women and children are most at risk for health defects. Detailed information is available from the Oneida Conservation Department.

XIII. Enforcement

13.1. *Fine and Penalty Schedule.* Violation of the Hunting, Fishing and Trapping law and/or rules may result in the fines/penalties as provided in the Fine and Penalty Schedule, which is incorporated into these rules as Attachment B.

13.2. *Animal Assessments.* In the event the Board finds a violation of the Hunting, Fishing and Trapping law and/or rules, in addition to imposing a fine or penalty, it may also impose a wildlife protection assessment (civil recovery value) as provided in the Animal Assessment Schedule, which is incorporated into these rules as Attachment C.

ATTACHMENT A - LICENSE AND PERMIT SCHEDULE		
License or Permit Name	Application Deadline**	Application Fee
Oneida Sportsmans License		
Adult Tribal Member	Not Applicable	\$10.00
Elder/Disabled Tribal Member	Not Applicable	No Charge
Youth Tribal Member	Not Applicable	\$10.00
Spouse or Dependent of a Tribal Member	Not Applicable	\$15.00
Elder Spouse or Elder Dependent of a Tribal Member	Not Applicable	\$7.50
Adult Descendant/Other Tribal Affiliation	Not Applicable	\$25.00
Elder Descendant/Other Tribal Affiliation	Not Applicable	\$12.50
Youth Descendant/Other Tribal Affiliation	Not Applicable	\$15.00
Adult Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$500.00
Elder Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$250.00
Youth Non-Tribal Member/Descendant/Other Tribal Affiliation	3rd Monday of August*	\$100.00
Tribal Member Ceremonial/Feast Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Disabled Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Nuisance Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Sustenance Permit		
Oneida Tribal Members Only	Not Applicable	No Charge
Deer Gun Permit		
Included in the issuance of Oneida Sportsman License	Prior to the Opening Date of the Season*	No Charge
Deer Gun Hunter's Choice Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Deer Bow Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Goose Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Small Game Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Turkey Permits		
Adult Tribal Member	Not Applicable	\$5.00
Elder/Disabled Tribal Member	Not Applicable	No charge
Youth Tribal Member	Not Applicable	No charge
Spouse or Dependent of a Tribal Member	Not Applicable	\$10.00
Elder Spouse or Elder Dependent of a Tribal Member	Not Applicable	\$5.00
Adult Descendant/Other Tribal Affiliation	Not Applicable	\$10.00
Elder Descendant/Other Tribal Affiliation	Not Applicable	\$5.00
Youth Descendant/Other Tribal Affiliation	Not Applicable	\$5.00
Adult Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$25.00
Elder Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$10.00
Youth Non-Tribal Member/Descendant/Other Tribal Affiliation	Not Applicable	\$10.00
Furbearer Permit		
Included in the issuance of Oneida Sportsman License	Not Applicable	No Charge
Dog Training Permits		
Adult Tribal Member	Not Applicable	\$20.00
Elder/Disabled Tribal Member	Not Applicable	\$10.00
* It is in the Department's full discretion whether to issue licenses and/or permits that do not comply with the required application deadlines, provided that the Department shall assess a \$10.00 late fee against all late applications, regardless of whether the license/permit is issued.		
** In all instances where an application deadline is not applicable, the license/permit may applied for up until any applicable established seasons have closed.		

ATTACHMENT C - WILDLIFE ASSESSMENT SCHEDULE	
Wildlife	Civil Assessment
Any Endangered or Threatened Species	\$ 900
Moose, Fisher, or Sandhill Crane	\$ 300
Bear, Cougar or Timberwolf	\$ 400
Wild Turkey or Wild Swan	\$ 200
Coyote, Raccoon or Mink	\$ 60
Deer	\$ 400
Ruffed Grouse, Spruce Hen, Wild Duck, Coot, or Wild Goose	\$ 50
Pheasant, Hungarian Partridge, Quail, Rail, Wilson's Snipe, Woodcock or Shorebirds, or Songbird	\$ 50
Muskrat, Rabbit or Squirrel	\$ 20
Muskellunge or Lake Sturgeon	\$ 60
Largemouth or Smallmouth Bass	\$ 40
Brook, Rainbow, Brown or Steelhead Trout	\$ 40
Walleye, Northern Pike or any other game fish	\$ 20
All Other Wildlife	\$ 20

Summary Report for Hunting, Fishing and Trapping Rules

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Hunting, Fishing and Trapping Handbook

Name of law being interpreted: Hunting, Fishing and Trapping

Rule Number: 1-13

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Details on regulations of Hunting, Fishing, and Trapping that are no longer in the Hunting, Fishing, and Trapping Law. Address issues of seasons, bag limits, permits, harvests, and licenses for hunting on Oneida Nation. Approve rules which are jointly adopted by the Environmental Resource Board and Conservation Department. Ensure safe hunting, proper natural resources management, and protection of species. Define assessments for unlawful harvesting and other violations of the Hunting, Fishing, and Trapping Law.

Statement of Effect: See Attached.

Financial Analysis: See Attached.



Statement of Effect

Hunting, Fishing and Trapping Rule Handbook

Summary

The Hunting, Fishing and Trapping Rule Handbook details information related to harvests, limits, seasons, licenses and other details which further support the Hunting, Fishing and Trapping law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Hunting, Fishing and Trapping law (“the Law”) delegates joint rulemaking authority to the Environmental Resource Board and the Conservation Department pursuant to the Administrative Rulemaking law. [see *Hunting, Fishing and Trapping law section 406.5-1*]. The Law describes the areas in which the Environmental Resource Board and the Conservation Department are delegated rulemaking authority. [see *Hunting, Fishing and Trapping law section 406.5-2(a) through 406.5-2(n), 406.7-4, 406.7-5*].

The Hunting, Fishing and Trapping Rule Handbook (“the Rule Handbook”) contains rules one (1) through thirteen (13) for the Law, as well as attached license and permit schedule, fine and penalty schedule, and animal assessment schedule. The Rule Handbook addresses information related to harvests, limits, seasons, licenses and other details which further support the Hunting, Fishing and Trapping law.

Conclusion

There are no legal bars to adopting the Hunting, Fishing and Trapping Rule Handbook.

Financial Analysis for Hunting, Fishing, and Trapping Handbook

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	Regular job duties	\$0
Office	Regular job duties	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	Ongoing, but negligible as considered part of regular job duties.	\$0
Other, please explain	N/A	\$0
Total Annual Cost		\$0

NOTICE OF PUBLIC MEETING

TO BE HELD

Friday, April 21 at 12:15 pm

IN THE

OBC Conference Room

2nd Floor Norbert Hill Center

N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Environmental Resource Board and the Conservation Department are hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

TOPIC: Hunting, Fishing and Trapping Rule Handbook

This is a proposal to adopt rules which would:

- ◆ List the detailed and specific regulations of Hunting, Fishing, and Trapping that are no longer in the Hunting, Fishing, and Trapping Law.
- ◆ Address issues of seasons, bag limits, permits, harvests, and licenses for hunting on Oneida Nation.
- ◆ Approve rules which are jointly adopted by the Environmental Resource Board and Conservation Department.
- ◆ Ensure safe hunting, proper natural resources management, and protection of species.
- ◆ Define assessments for unlawful harvesting and other violations of the Hunting, Fishing, and Trapping Law.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD OPEN UNTIL April 28, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Environmental Resource Board by U.S. mail, interoffice mail, e-mail or fax.

Environmental Resource Board
3759 W. Mason St., Suite 6
schuber@oneidanation.org
920-496-5362

DENTAL HEALTH POSTER CONTEST

Kindergarten—Third grade

The month of February was Dental Health Month. The Oneida Dental Clinic teamed up the Oneida Nation Elementary School to hold a Dental Health Poster contest. Students learned about dental health in Art Class and created their own unique poster to educate others on how to keep their teeth healthy. Three students from each class were chosen to win an electric toothbrush.

The winners are:

Kindergarten A: Lowahsyate Christjohn, Clay Young, Alyssa Perkins

Kindergarten B: Isabella Sotelo, Nihzonie Montoya, Andres Rodriguez

Kindergarten C: Charlize King, Javeon Espinoza, Davis Brunette

1A: Sir David Smith, Asha Burgois, Emmit Madrid

1B: Jovanna Espinoza, Andrew Sitting Bear, Anthony Skenadore

1C: LaDainan Danforth, Tekwabjikekwe Denn, Lilly Starr

2A: Fabian Torres-Valesquez, Grace Gauthier, Shaylea Huff

2B: Bella Hill, Irie Crumble, Aracelli Rodriguez, Jackson Newton

2C: Jose Frausto, Franchesca Marivilla, Delianna Gonzales



Kindergarten A Winners



Nihzonie Montoya, KB



Kindergarten C Winners



First grade B Winners



First grade C Winners



Irie Crumble, 2B



Winners from 2C



Third grade winners from 3A.

OLIPP

(Oneida Life Insurance Plan Plus)

is a \$15,000 term life insurance policy available to ALL enrolled tribal members and intended to pay your funeral/final expenses. It is strongly recommended that all enrolled members over the age of 18, who have not completed their *"Oneida Beneficiary Designation form"* to complete and submit their form to the Oneida Enrollment Department.

For more information, call:

(920) 869-6212



HUNTING, FISHING and TRAPPING HANDBOOK PUBLIC MEETING
Business Committee Conference Room-2nd Floor Norbert Hill Center
Host by: The Environmental Resource Board and the Conservation Department
April 21, 2017 at 12:15p.m.

PUBLIC MEETING SIGN IN SHEET

	Name: (Print clearly)	Email Address / Phone #	Department/Roll #	Oral Testimony (Y) or (N)
1.	<i>Joseph Kanarok</i>		8419	Y
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

Environmental Resource Board and Oneida Conservation Department
Public Meeting Transcript
Hunting, Fishing and Trapping Rule Handbook
 Business Committee Conference Room – 2nd Floor Norbert Hill Center
 April 21, 2017 at 12:15 P.M.

Gene Shubert - "Greetings. The time is 12:15 pm and the date is April 21st. I will now call the public meeting for Hunting, Fishing, Trapping Handbook to order. The ERB and Conservation Dept is hosting this meeting to gather feedback from the community regarding this Legislative Proposal. All persons who wish to present oral testimony need to register on the sign-in sheet. Written comments may be submitted in-person or by U.S. mail, interoffice mail, email or fax as provided on the public meeting notice. These comments must be received by the close of business day on April 28th. In attendance from ERB is Gene Schubert. We will begin today's meeting for the Hunting, Fishing, Trapping Handbook.

This is a proposal to adopt rules which would:

- List the detailed and specific regulations of Hunting, Fishing, and Trapping that are no longer in the Hunting, Fishing, and Trapping Law.
- Address issues of seasons, bag limits, permits, harvests, and licenses for hunting on Oneida Nation.
- Approve rules which are jointly adopted by the Environmental Resource Board and Conservation Department.
- Ensure safe hunting, proper natural resources management, and protection of species.
- Define assessments for unlawful harvesting and other violations of the Hunting, Fishing, and Trapping Law.

Shoney would you like to come up for your statements?

Shoney Skenandore (#8419) - Hello. This is kind of awkward... I had questions... something I've noticed over the past 5 years is the increase of popularity of coyote hunting, and that is what my concern is about. Are there seasons for coyote hunting? I notice a lot of road hunting. I don't know what the rules are regarding that. I also don't know if the hunters I see are always tribal members. What are the laws regarding trespassing on tribal land, not necessarily by the people but by the dogs. What are the dogs allowed to go into tribal land and scare out the coyotes and push them into other lands and then they're shot. A big concern of mine is I don't know how you consider this hunting if you just have the gentlemen sitting in trucks and the dogs scare out coyotes and then they hop out and they shoot 'em. That doesn't seem like hunting to me. I don't know if there are bag limits. I had a conversation with an Oneida gentlemen about coyote hunting. He was a coyote hunter and I asked him what the purpose was, what do you use the coyote fur. He says he uses it to make gloves or whatever, but he also made the comment

“kill them all”, which is very disturbing to me that this would be coming from an Oneida gentlemen, and if that is an attitude towards a species, that concerns me, and that’s why I’m here.

So that’s why... I saw the meeting notice in the Kali, and it addresses the issues of the seasons, the bag limits, the permits, harvests. I’ve become more concerned, like I said, within the last 5 years its really increased in popularity. I have more fear for myself, and for my family and children, of the hunters and the dogs then the coyotes themselves. It would have been nice if someone else was here to maybe answer some of my questions instead of just me standing up here and the mic, it’s really kind of shitty... but it is what it is. Maybe some of these comments will be heard, maybe they won’t be, maybe there’s rules and regulations already in place for this, but um, like I said, where I live, it seems to be a free-for-all out there come winter when the snow falls especially there’s these trucks are just parked on the road and waiting for their dogs to come out, I mean it doesn’t really seem fair when they got dogs running in the woods and they all got radios within their trucks and they just communicate back-n-forth to each other. I don’t know, that don’t seem like hunting to me, and I’m not against the harvest, or coyote hunting in general, but there’s a responsible way to do it. If it’s just a free for all and they can go kill them all if they want, um... that’s why I’m here. Thanks for the time.

Gene Shubert - With there being no more speakers registered the public meeting for the Hunting, Fishing, Trapping Handbook is now closed at 12:21 pm. Written comments may be submitted until close of business on Friday, April 28th.”



MEMORANDUM

TO: Legislative Operating Committee

FROM: Krystal L. John, Staff Attorney

DATE: May 3, 2017

SUBJECT: Hunting, Fishing and Trapping Public Meeting Comment Review

On April 21, 2017, a public meeting was held regarding the proposed Hunting, Fishing and Trapping Rule Handbook. This memorandum is submitted as a review of the oral comments presented during the public meeting – no written comments were submitted during the comment period.

Comment 1 – Hunting Coyotes

Shoney Skenandore (#8419) - Hello. This is kind of awkward... I had questions... something I've noticed over the past 5 years is the increase of popularity of coyote hunting, and that is what my concern is about. Are there seasons for coyote hunting? I notice a lot of road hunting. I don't know what the rules are regarding that. I also don't know if the hunters I see are always tribal members. What are the laws regarding trespassing on tribal land, not necessarily by the people but by the dogs. What are the dogs allowed to go into tribal land and scare out the coyotes and push them into other lands and then they're shot. A big concern of mine is I don't know how you consider this hunting if you just have the gentlemen sitting in trucks and the dogs scare out coyotes and then they hop out and they shoot 'em. That doesn't seem like hunting to me. I don't know if there are bag limits. I had a conversation with an Oneida gentlemen about coyote hunting. He was a coyote hunter and I asked him what the purpose was, what do you use the coyote fur. He says he uses it to make gloves or whatever, but he also made the comment "kill them all", which is very disturbing to me that this would be coming from an Oneida gentlemen, and if that is an attitude towards a species, that concerns me, and that's why I'm here. So that's why... I saw the meeting notice in the Kali, and it addresses the issues of the seasons, the bag limits, the permits, harvests. I've become more concerned, like I said, within the last 5 years its really increased in popularity. I have more fear for myself, and for my family and children, of the hunters and the dogs then the coyotes themselves. It would have been nice if someone else was here to maybe answer some of my questions instead of just me standing up here and the mic, it's really kind of shitty... but it is what it is. Maybe some of these comments will be heard, maybe they won't be, maybe there's rules and regulations already in place for this, but um, like I said, where I live, it seems to be a free-for-all out there come winter when the

Page 2

snow falls especially there's these trucks are just parked on the road and waiting for their dogs to come out, I mean it doesn't really seem fair when they got dogs running in the woods and they all got radios within their trucks and they just communicate back-n-forth to each other. I don't know, that don't seem like hunting to me, and I'm not against the harvest, or coyote hunting in general, but there's a responsible way to do it. If it's just a free for all and they can go kill them all if they want, um... that's why I'm here. Thanks for the time.

Response – Coyote hunting is discussed in the Hunting, Fishing and Trapping law, which has already been adopted with amendments and was not a topic included in the Hunting, Fishing and Trapping Rule Handbook, which was the topic of this public meeting. That being said, Eugene Shubert and I stayed after the public meeting to respond to Mr. Skenandore's concerns as they related to coyote hunting. Our verbal response indicated the following:

- Coyote hunting is covered in the Hunting, Fishing and Trapping law in section 406.6-1(a)(2). Specifically, that section provides that there are no set seasons for coyote hunting and that landowners and lessees and guests with permission of the landowners or lessees, may hunt and trap coyote on the property they own or lease year-round without a sportsman's license.
- There is no limit on the number of coyotes that are taken as the Environmental Resource Board and the Conservation Department have not seen any unwanted impacts to the population based on unlimited hunting privileges.
- Both the Nation's Hunting, Fishing and Trapping law and rules and the state's relevant laws and regulations provide limited circumstances under which hunting from a vehicle is permitted for disabled persons. If Mr. Skenandore witnesses hunting from a vehicle in the future which is cause for concern, he is encouraged to notify an Oneida Conversation Warden, an Oneida Police Officer and/or a state warden.
- General hunting restrictions indicating what types of weapons may be used and when hunting with the aid of dog is permitted remain applicable to coyote hunting.



Title 4. Environment and Natural Resources – Chapter 406

HUNTING, FISHING and TRAPPING

Rule # 1-13 – Hunting, Fishing and Trapping Handbook

- I. Purpose, Authority, Adoption, Amendment and Repeal
- II. Definitions
- III. General Requirements
- IV. Available Permits
- V. Tree Stands
- VI. Blinds
- VII. Baiting
- VIII. Endangered, Threatened and Protected Species
- IX. Possession, Registration and Transportation of Carcasses
- X. Fishing
- XI. General Regulations
- XII. Health Advisory
- XIII. Enforcement

I. Purpose, Authority, Adoption, Amendment and Repeal

1-1. Purpose. The purpose for these rules is to further detail the information related to harvests, limits, seasons, licenses, and other details to further support the Hunting, Fishing and Trapping law.

1-2. Authority. The Hunting, Fishing and Trapping law delegated the Environmental Resource Board and Conservation Department joint rulemaking authority pursuant to the Administrative Rulemaking law.

1-3. These rules were jointly adopted by the Environmental Resource Board and Conservation Department in accordance with the procedures of the Administrative Rulemaking law.

1-4. These rules may be amended or repealed by the joint approval of the Environmental Resource Board and Conservation Department pursuant to the procedures set out in the Administrative Rulemaking law. For the purpose of future amendments to these rules, each article is a separate rule and may be amended as such.

1-5. Should a provision of these rules or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1-6. In the event of a conflict between a provision of these rules and a provision of another rule, internal policy, procedure, or other regulation, the provisions of these rules control.

1-7. These rules supersede all prior rules, regulations, internal policies or other requirements relating to the Hunting, Fishing and Trapping law.

1-8. This article I applies to each subsequent rule listed herein.

II. Definitions

2-1. This article governs the definitions of words and phrases used within this Handbook. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Antlered Deer” means a deer which has either two (2) antlers with two (2) or more points on each antler or one (1) antler with four (4) or more points where each point must

measure one (1) inch in length from the main beam and, at a minimum, one (1) antler must be three (3) or more inches in length.

(b) “Baited Area” means an area within a one hundred (100) yard radius from any placed bait material, provided that once bait material is placed, the area remains a baited area for a period of ten (10) calendar days from the date the bait material is either fully consumed or removed.

(c) “Furbearer” means wildlife taken primarily for the sale of the said wildlife’s pelt and includes, but is not limited to, mink, muskrat, beaver, weasel, fox, coyote, bobcat, badger and raccoon.

(d) “Game Fish” means all species belonging to the trout, pike, catfish, bullhead, sunfish (including blue gill and crappie), bass, and perch families of fish.

(e) “Harass” means to shoot at, disturb, worry, rally, concentrate, harry, chase, drive, herd, or torment wildlife.

(f) “Open Water” means any water beyond a natural growth of vegetation rooted to the bottom and extending above the water surface of such height as to offer whole or partial concealment of the hunter.

(g) “Permanent Tree Stand” means any manufactured or constructed platform fastened by nails, screws, or other means deemed permanently fixed, for the purpose of allowing a person to view, observe, or hunt wild animals.

(h) “Possession Limit” means the maximum number of a particular wildlife species that may be in the possession of a person who has hunted, fished, or trapped two (2) days or more.

(i) “Raptor” means all hawks, owls, eagles, falcons, and osprey.

(j) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and includes any such weapon which may be readily restored to fire a fixed cartridge.

(k) “Semi-permanent Tree Stand” means any manufactured or constructed platform fastened, strapped, chained, or otherwise attached to a tree, for the purpose of allowing a person to view, observe or hunt wild animals.

(l) “Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (bird shot) or a single projectile for each pull of the trigger and includes any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) “Sight Exposed Bait” means any bones, meat or viscera of an animal, bird, or fish with or without skin, hide or feathers which can be seen from above the bait.

(n) “Size Limit” means the specific minimum length and/or maximum length in inches of a species of fish that may be possessed legally.

(o) “Small Game” includes, but is not limited to the following: geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; commonly known as rails, coots, mud hens, and gallinule; commonly known as snipe and woodcock; commonly

known as grouse, pheasants, partridges, and quail; cottontail rabbit, and gray and fox squirrel.

(p) “Specified Area” means areas where the taking of fish and wildlife is restricted to the specifications set forth by the law, rule or Environmental Resource Board resolutions.

(q) “Unprotected Species” means species which can be hunted year round without limit and includes: opossum, skunk, weasel, mice, and all other animals not mentioned in the Hunting, Fishing and Trapping law and these rules.

(r) “Waterfowl” means any wild species of geese, brants, or ducks.

(s) “Wet Set” or “Water Set” means a trap which is staked in such a manner as to permit the trap or trapped animal to reach water at any point.

III. General Requirements

3-1. *License and Permit on Person.* All persons shall have in his/her possession, while hunting, fishing or trapping within the exterior boundaries of the reservation, a valid Oneida sportsman license issued by the Department allowing him/her to hunt, fish, or trap on the reservation and, if the action also requires a permit, the applicable permit also.

3-2. *Limit on Non-Tribal Member Licenses.* The Department may not issue more than thirty-five (35) Oneida sportsman licenses to Non-Tribal Members in any calendar year. In addition, in order for a non-Tribal member to apply for an Oneida sportsman license, the non-Tribal member shall consent in writing to forfeit any deer hunting privileges granted by a state issued hunting license/permit in regard to all land within the Reservation boundaries, regardless of ownership status.

3-3. *License Application Deadlines and Expirations.* Tribal members, descendants, affiliates of other tribes and Tribal member’s spouses and/or dependents may apply for a sportsman license at any time; the application deadline for a non-member sportsman license is the third (3rd) Monday of August. Sportsman licenses expire each year on August 31st.

3-4. *License and Permit Availability and Schedule.* Oneida sportsman licenses and permits may be obtained from the Conservation Department, which is located at N8047 County Road U.

(a) *Permit Availability.* Nuisance permits, sustenance permits, ceremonial permits and dog training permits are only available to Tribal members and Tribal members shall apply for each of these permits separately from the Oneida sportsman license. Turkey permits are available to all persons eligible for an Oneida sportsman license that is not limited to fishing, provided that licensees shall apply for turkey permits separately from the Oneida sportsman license.

(b) *License and Permit Schedule.* The license and permit schedule is included in these rules as Attachment A.

3-5. *Denial of a License or Permit.* An application for a sportsman license or permit may be denied according to section 406.6-7 of the Hunting, Fishing and Trapping law.

3-6. Applicants born on or after January 1, 1973 shall present a hunter’s education certification prior to issuance of any sportsman license.

IV. Available Permits

4-1. *Comprehensive List of Available Permits.* Subject to the requirements provided in the Hunting, Fishing, Trapping law and these rules, the Department may issue the following permits,

provided that in order to be eligible for a permit, a full sportsman license is required; a fishing only sportsman license is not sufficient:

- (a) Tribal Member Ceremonial/Feast Permit;
- (b) Disabled Permit;
- (c) Nuisance Permit;
- (d) Sustenance Permit;
- (e) Deer Gun Permit;
- (f) Deer Gun Hunter's Choice Permit;
- (g) Deer Bow Permit;
- (h) Small Game Permit;
- (i) Turkey Permit;
- (j) Waterfowl Permit;
- (k) Furbearer Permit;
- (l) Dog Hunting Permit; and
- (m) Found Carcass Permit.

4-2. *Responsibility to Set Seasons and Limits.* The Environmental Resource Board, with input from the Conservation Department, shall establish, annually by written Environmental Resource Board resolution, by no later than the end of March each calendar year, the following and, in doing so shall consider the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest:

- (a) Any bag limits applicable to various permits.
- (b) Any possession limits applicable to various permits.
- (c) Season opening and closing dates for each permit, provided that:
 - (1) Bow deer season may not open before September 1st and may not close any later than January 31st.
 - (2) Muzzleloading deer season shall open the calendar day following the close of the deer gun season and may not close any later than the first Sunday in January.
 - (3) The season for small game may not begin before September 1st or close later than March 31st.
 - (4) The season for waterfowl may not begin before September 1st or close later than December 31st.
 - (5) The seasons for furbearers may not begin before October 1st or close later than April 1st.
- (d) Any hunting hour restrictions that may apply to a season, provided that if setting hunting hours, such hours may not permit hunting prior to thirty (30) minutes before sunrise or extend beyond fifteen (15) minutes after sunset.
- (e) The number of carcass tags that may be issued pursuant to each applicable permit, which may include limitations based on age, sex, size, species or other factors established by the Environmental Resource Board. Daily bag and possession limits pursuant to a small game permit may not exceed a harvest of ten (10) wildlife of each species per day.

(f) Fish minimum lengths and slot sizes for designated fish species.

(g) Which areas are designated as available for hunting and trapping as indicated on the Oneida Nation Hunting Map. If the Nation acquires additional properties eligible for hunting and trapping after the initial annual Oneida Nation Hunting Map has been approved, the Environmental Resource Board may adopt a revised Oneida Nation Hunting Map by written resolution. Upon the setting of such designated areas, the Department shall mark all properties not open for hunting and trapping.

(h) Any designated protected waters in which fishing is not permitted.

4-3. *Tribal Member Ceremonial/Feast Permit.* In addition to the requirement in section 406.6-2 of the Hunting, Fishing and Trapping law, the following requirements also apply:

(a) A ceremonial/feast permit may not be effective for a period longer than ten (10) calendar days and may only be issued between the third (3rd) Saturday of September and the last day of December for any calendar year .

(b) The Department shall indicate on each permit how much wildlife may be taken pursuant to the permit and which areas are open for the ceremonial/feast hunt.

(c) Permittees shall register any deer harvested pursuant to a ceremonial/feast permit within twenty-four (24) hours of the harvest.

(d) A ceremonial/feast permit issued for harvested deer may only be issued for antlerless deer; it is unlawful to harvest an antlered deer under a ceremonial/feast permit.

4-4. *Disabled Permit.* In addition to the requirements and limitations regarding disabled permits included in section 406.6-6 of the Hunting, Fishing and Trapping law, a disabled hunter permit also requires:

~~(a) That when hunting from the roadway, the roadway is part of a county highway, a town highway or any other highway that is not part of a street or of a state trunk or federal highway.~~

~~(b)~~(a) The vehicle is located off of the hard surface of the roadway and is not in violation of any applicable prohibition or restriction that applies to parking, stopping or standing of the vehicle.

~~(c)~~(b) The holder of the permit is not as a designated hunter.

~~(d)~~(c) The holder of the permit has obtained permission from any person who is the owner or lessee of private property across or on to which the holder of the permit intends to discharge a weapon.

~~(e)~~(d) The vehicle bears disabled plates or displays a sign that is at least 11 inches square on which is conspicuously written “disabled hunter”.

~~(f)~~(e) The holder of the permit discharges the weapon away from and not across or parallel to the roadway.

4-5. *Nuisance Animal Removal Permit.* For each nuisance animal removal permit, based on the circumstances and extent of the nuisance, the Department shall provide the amount of wildlife that the permittee may take pursuant to the permit and may limit the amount based on age, sex, size, species or other relevant factors established by the Department; the Department

may also the prescribed manner of taking required by the permit. In addition to the requirements in section 406.8 of the Hunting, Fishing and Trapping law, the following also apply:

(a) *Assistance by the Department.* The Department may assist the permittee in taking and/or trapping a nuisance animal if:

(1) Extraordinary damage is occurring, where the determination of extraordinary damage is in the Department's best discretion.

(2) The permittee has demonstrated an inability to harvest an adequate number of the nuisance animals and damage to the permittee's property in the current calendar exceeds, or is likely to exceed, \$5,000.00.

(b) *Conditions to Nuisance Deer Removal Permits.* The following conditions apply to nuisance deer removal permits:

(1) Permittees and permittees' agents may hunt deer only during the period from thirty (30) minutes before sunrise to fifteen (15) minutes after sunset during the closed deer gun season. During the deer gun season permittees and permittees' agents shall comply with any restrictions regarding shooting hours.

(2) No deer may be harvested pursuant to a nuisance deer removal permit within the twenty-four (24) hour period prior to the opening of gun deer season.

(3) The weapon restrictions provided in article 4-7(a)(1) and (2) apply to nuisance deer removal permits.

(4) If the permittee and/or the permittee's agent does not fulfill fifty percent (50%) or more of the nuisance deer removal permit's quota in the initial thirty (30) calendar days for which the permit is effective, the Department may withdraw the permit.

(5) Unless specifically exempt by the Department in the permit, only deer without antlers or with antlers less than three (3) inches in length may be harvested pursuant to a nuisance deer removal permit.

(c) *Conditions to Nuisance Canadian Geese Removal Permits.* The following conditions apply to nuisance Canadian geese removal permits:

(1) Permittees and/or permittees' agents may retain any Canadian goose carcasses harvested pursuant to a nuisance Canadian geese removal permit, provided that permittees' agents may only retain carcasses declined by the original permittee.

(2) The weapon restrictions provided in article 4-10(a) apply to nuisance Canadian geese removal permits.

(3) If during open goose season, the Department may not issue an applicant a nuisance Canadian geese removal permit until all of the applicant's goose carcass tags under the goose permit have been filled.

4-6. *Sustenance Permits.* The Department may issue sustenance permits to Tribal Members who are in need of nourishment which allows the permittee to harvest one (1) additional antlerless deer throughout the course of the open deer bow, gun or muzzleloader seasons. Only one (1) sustenance permit may be issued per household. Permittees may designate a hunter to

hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law. Permittees shall register any deer harvested pursuant to a sustenance permit within twenty-four (24) hours of the harvest. The weapon restrictions provided in article 4-7(a)(1), (2) and (3) below apply to sustenance permits.

4-7. *Deer Permits.* This article applies to deer gun, deer bow and deer hunter's choice permits.

(a) *Restrictions on Deer Permits.*

(1) *Firearms Restrictions.* No person may hunt deer with:

(A) A rifle, with a shot gun smaller than twenty (20) gauge or larger than ten (10) gauge, or with a muzzleloader smaller than .40 caliber.

(B) Any handgun which is loaded with caliber chambered for commercially manufactured center fire cartridge which produce a muzzle velocity of nine hundred fifty (950) feet per second and no more than two thousand two hundred (2,200) feet per second and has a barrel length of five (5) inches measured from the muzzle to the firing pin with the action closed. Hunters using handguns for deer hunting may possess other firearms legal for the zone in which they are hunting deer.

(2) *Deer Archery Season Regulations.*

(A) No person may hunt deer with a bow having a pull strength less than thirty-five (35) pounds or using an arrow that does not have a broadhead.

(B) No person may hunt deer with a crossbow, unless the crossbow:

(i) Is fired from the shoulder;

(ii) Has a minimum draw weight of one hundred (100) pounds;

(iii) Has stock of not less than thirty (30) inches in length;

(iv) Is used with arrows or bolts of not less than fourteen (14) inches in length with a broadhead; and

(v) Has a working safety.

(C) No person may possess a deer harvested with a firearm during an archery only deer hunting season.

(D) No person hunting deer under the authority of an archery deer permit may have a firearm in his/her possession unless participating in muzzleloading season or using a ceremonial/feast permit.

(E) Group hunting is not permitted during deer archery hunting seasons.

(3) *Archery Hunting During Deer Gun Season.* A person may hunt deer with archery equipment during deer gun season and shall tag any such harvested deer with either a deer gun or deer bow tag, provided that the blaze orange requirements in this article apply.

(4) *Blaze Orange Required.* During the gun deer season and muzzleloading season, no person shall hunt any wildlife, except waterfowl, unless at least fifty percent (50%) of the person's outer clothing above the waist is colored blaze/hunter orange.

(5) *Hunting Deer with Dogs Prohibited.* No person may hunt deer with the aid of a dog(s).

(6) *Removal and Retention of Carcass Tags.* Permittees that harvest deer shall ensure that deer carcass tags remain attached to the deer until the carcass is

butchered or processed for consumption and, once the carcass tag is removed from the deer, shall retain the carcass tag until all of the meat from the subject carcass has been consumed. A person who receives meat from another as a gift is not required to possess the carcass tag, provided that the permittee gifting the meat shall provide the receiver with the carcass tag number pursuant to which the meat was harvested.

(7) *Designated Hunters.* Designated deer hunters may only take antlerless deer and, regardless of the number of tags issued to the original permittee, may fill a maximum of two (2) deer carcass tags on behalf of the original permittee.

(8) *Registration.*

(A) Permittees shall register deer harvested by a firearm during the gun deer season no later than 4:00 p.m. the day after the close of the gun deer season.

(B) Permittees shall register all deer harvested by a bow and arrow, cross bow or muzzleloader no later than 4:00 p.m. on the third (3rd) day after the deer was harvested.

(b) *Deer Hunter's Choice Permits.* Deer hunter's choice permits may be issued to Tribal Member elders and first time graduates of a hunter safety program. A deer hunters choice permit allows the permittee to harvest an additional antlerless deer during the gun season and, if the tag has not been filled, extending into the deer muzzleloading season. Permittees may designate a hunter to hunt on the permittee's behalf in accordance with section 406.9-4 of the Hunting, Fishing and Trapping law.

4-8. *Small Game Permit.* No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(a) *Permissible Methods.* The hunting of small game birds is restricted to the use of an air rifle, shotgun or bow and arrow. The hunting of small game mammals is restricted to the use of an air rifle, shotgun, rifle, or bow and arrow.

(1) *Firearm Restrictions.* No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges.

(C) Rifles or handguns may not be used for hunting birds.

(D) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(E) While possessing shot shells larger than two (2) shot or while possessing slugs, except that during deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting small game.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(2) *Bow and Arrow Restrictions.* No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Use of Dogs.* Dogs may be used while hunting small game.

4-9. *Turkey Permit.* An issued turkey permit authorizes the permittee to hunt turkey during both the spring and fall seasons; a separate permit is not required for each season. Hunting dogs may be used during the fall turkey season. Designated hunters named pursuant to a turkey permit and based on the requirements of the Hunting, Fishing and Trapping law in section 406.9-4 may fill a maximum of two (2) turkey tags for the original permittee, regardless of the number of tags issued to the original permittee.

4-10. *Waterfowl Permit.* An issued waterfowl permit authorizes the permittee to hunt waterfowl during the set season, but does not authorize permittees to possess live waterfowl; permittees shall kill all waterfowl immediately once possession is gained.

(a) *Permissible Methods.* No person may take waterfowl with a trap, net and/or fishhook.

(1) *Firearms Restrictions.* No person may hunt waterfowl:

(A) With a shotgun larger than ten (10) gauge; duck plugs are not required.

(B) With a rifle of any type.

(C) With a shotgun with a barrel length less than eighteen (18) inches.

(D) With a handgun of any type.

(E) While in possession of lead shot.

(2) *Bow and Arrow Restrictions.* No person may hunt waterfowl:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(3) *Migratory Bird Calls.* No person may use electronic calls of any type to hunt waterfowl.

(4) *Hazing.* No person may drive, rally or chase waterfowl with any motorized conveyance in order to force the waterfowl into hunters' range.

(5) *Live Decoys.* No person may hunt waterfowl with the aid of live decoys. All live, tame or captive waterfowl shall be removed for a period of ten (10) consecutive days prior to hunting and confined within an enclosure which substantially reduces the audibility of the waterfowls' calls and completely conceals the captive waterfowl from the sight of any non-captive waterfowl.

(6) *Decoys.* No person hunting waterfowl may place decoys beyond two hundred (200) feet from the cover or blind in which the person is located. No person hunting waterfowl may:

(A) Place decoys in the water prior to one (1) hour before opening of waterfowl hunting time.

(B) Leave decoys in the water more than twenty (20) minutes after the close of waterfowl hunting time.

(b) *Blind Restrictions.* No person hunting waterfowl may establish a waterfowl hunting blind, including the bed of any navigable lake, reservoir, pond or stream, prior to seven

(7) days before the waterfowl hunting season or leave it established beyond seven (7) days after the close of the waterfowl hunting season.

(c) *Open Water Hunting*. Unless pursuing a crippled waterfowl, waterfowl may not be hunting from a moving watercraft. If a motorized watercraft is used to pursue a crippled waterfowl into open water, the motor must be shut off and all forward movement of the boat must cease before loading and shooting at the crippled waterfowl.

4-11. *Furbearer Permit*. A furbearer permit authorizes Tribal members to operate an unlimited number of traps or snares in any combination and authorizes spouses or dependents of Tribal members or persons affiliated with another tribe to operate a maximum of one hundred and fifty (150) traps or snares in any combination.

(a) *Permissible Methods*. No person may:

(1) Trap with any leg hold dry set trap larger than a number four (4).

(2) Trap with any leg hold wet set trap larger than a number five (5).

(3) Trap within twenty-five (25) feet of any sight-exposed bait.

(4) Set any trap or snare unless a metal tag is attached, stamped, or engraved legibly upon the trap or snare which has the owner's enrollment number and/or the name, address, and phone number.

(5) Take mink or muskrat by means other than trapping or snaring.

(6) Use any traps to take any wildlife not specified as furbearers.

(7) Possess any trap for the purpose of trapping furbearers other than a leg hold trap, live trap, conibear trap, snare or colony trap.

(8) *Firearm Restrictions*. No person may hunt small game:

(A) With a shotgun larger than ten (10) gauge.

(B) With a rifle or handgun larger than .22 caliber, including both rim fire and center-fire cartridges, provided that a permittee may use up to a .223 caliber for fox and coyote hunting.

(C) With a handgun with a barrel less than five and a half (5) inches in length as measured from the muzzle to the firing pin with action closed.

(D) While possessing shot shells larger than two (2) shot or while possessing slugs, except that:

(i) During deer gun season, a person having both an Oneida sportsman license and a deer gun hunting permit may possess slugs while hunting furbearer; and

(ii) A buckshot may be used for hunting fox and coyote.

(E) With any type of shell, cartridge or altered projectile or device which is not considered a factory load, copy or style.

(9) *Bow and Arrow Restrictions*. No person may hunt small game:

(A) With a bow having a pull or draw strength less than thirty-five (35) pounds.

(B) With arrows less than twenty-four (24) inches in length or without at least three (3) untrimmed feathers or five (5) trimmed feathers.

(b) *Set and Placement Restrictions*. No person trapping furbearers may:

(1) Operate trap sets which permit the trapped animal to reach water, except during the operation of a wet set or colony trap during applicable furbearer seasons.

(2) Set any trap on any perch more than three (3) feet above the ground.

(c) *Trap Tending*. Permittees shall check all dry set traps at least once every twenty-four (24) hours and shall and remove any wildlife trapped therein. Permittees shall check all wet set traps at least once every four (4) calendar days and shall remove any wildlife trapped therein.

(d) *Use of Dogs*. Dogs may be used while hunting raccoon, coyote and fox.

(e) *Permission to Hunt from a Motor Vehicle*. Permittees may request permission to hunt furbearers from a motor vehicle; absent permission from the Department it is not permissible to hunt, kill or harass furbearers from any type of motor vehicle.

4-12. *Dog Training Permit*. The Department may issue dog training permits to persons who wish to possess and release small game birds for dog training purposes. The permit shall contain requirements such as the location where the birds will be released and, if applicable, the maximum number of birds that may be released.

(a) Prior to being released, the permittee shall mark and identify all birds to be released by fixing a leg band to the bird's leg which identifies the dog training permit number.

(b) The following small game birds may be released pursuant to a dog training permit:

(1) Pheasant;

(2) Grey partridge;

(3) Red Legged Partridge;

(4) Bob White Quail;

(5) Chukar Partridge; and

(6) Pharo Pigeons.

(c) The approval of the Environmental Resource Board is required, prior to release, should a permittee wish to release a small game bird that is not included in the list of authorized small game birds provided in article 4-12(b).

4-13. *Found Carcass Permit*. A found carcass permit is available to Tribal members only for any wildlife found injured and/or killed by any non-hunting related cause. To obtain a Found Carcass Permit, the requestor shall contact the Department and provide the location of the found carcass. After inspecting the condition of the wildlife, the Department shall either issue the requestor a Found Carcass Permit or deny the permit and take the carcass into possession.

V. Tree Stands

5-1. *Permanent Tree Stands Prohibited on the Nation's Lands*. Permanent tree stands may not be erected on land owned by the Nation.

5-2. *Semi-Permanent Tree Stands*. Semi-permanent tree stands may be put, but not sooner than two (2) weeks before the archery season opens and shall be removed no later than April 1st.

5-3. *Tree Stand Owner Information*. All tree stands must be stamped with the owner's enrollment number and/or name, address and phone number for identification.

VI. Blinds

6-1. If a blind is constructed with manufactured materials, such blind requires identification either with a tag affixed to the blind or engraved directly into the blind which contains the owner's enrollment number and/or name, address and phone number for identification.

6-2. During the gun deer season and muzzleloading season, no person shall occupy a blind unless there is three hundred sixty (360) degrees of visible blaze orange on the blind.

VII. Baiting

7-1. Persons may not:

(a) Use bait material, which includes, but is not limited to, liquid or scent, for attracting wildlife:

(1) which contains or, at the time of use, is contained within: honey, bones, fish, meat, solid animal fat, parts of animal carcasses, metal, paper, plastic, glass, wood (other than hollow stumps, or other non-degradable materials;

(2) in excess of ten (10) gallons of bait material in a baited area, provided that, salt and salt blocks are excluded from this restriction.

(b) Hunt waterfowl with the aid of bait other than grain crops left in the field due to normal agricultural practices.

(c) Hunt over bait materials, regardless of whether or not the bait materials were intentionally placed as bait, which do not comply with the requirements of these rules.

VIII. Endangered, Threatened and Protected Species

8-1. Absent a nuisance permit, no person may take or kill any endangered, threatened or otherwise protected species or damage or tamper with the nests or eggs of an endangered, threatened or otherwise protected species on the reservation.

8-2. A federal permit issued by the United States Fish and Wildlife Service is required in order for any Tribal member possess an eagle or any part thereof. Tribal members may request application forms directly from the United States Fish and Wildlife Service, the Department shall also have copies of the application forms available.

IX. Possession, Registration and Transportation of Carcasses

9-1. *Attachment of Carcass Tags.* For wildlife subject to permit that includes carcass tags, upon taking of the wildlife, the permittee shall immediately attach the carcass tag as follows:

Wildlife Species	Required Method of Carcass Tag Attachment
Deer	Attach to antler, ear or hind leg
Goose	Attach to featherless portion of the leg
Turkey	Attach to featherless portion of the leg

9-2. *Wildlife Registration.* Except for deer during deer gun hunting season or where shorter timeframes are provided in these rules, a permittee taking wildlife pursuant to a permit which requires a carcass tag shall register the said wildlife with the Department within three (3) calendar days of the taking. Permittee may register wildlife at the Department or any other registration area designated by the Department. Deer harvested during deer gun hunting season shall be registered by 4 pm the day after close of the firearm season. Deer registration tag should be retained with meat until consumed.

9-3. *Wildlife Transportation.* Wildlife may not be transported by persons that do not possess the required Oneida sportsman license and any applicable permits. A person may only transport his or her own lawfully possessed wildlife.

(a) *Birds.* Permittees shall ensure that, at a minimum, the fully feathered head or one (1) fully feathered wing remains attached to each bird that is transported from the field until the bird reaches the permittees residence or processing location.

(b) *Fish.* While in transportation, all fish must be able to be readily counted. Fish may be dressed, but permittees shall ensure that the body of each fish remains intact while the fish is transported from the water until the fish reaches the permittee's residence or processing location.

(c) *Found Carcasses*. Persons finding wildlife carcasses may not transport said carcasses until such person has applied for and received a Found Carcass Permit from the Department. Permittees shall abide by any requirements of the Found Carcass Permit, including those related to carcass tags and transportation of the carcass.

(d) *Registration Required Prior to Transportation*. Wildlife subject to registration requirements may not be transported off of the reservation until all registration requirements have been satisfied.

(e) *Accompaniment of Wildlife Pending Registration*. Permittees shall accompany all wildlife harvested subject to registration requirements at all times until all registration requirements have been satisfied. No person may knowingly accept for and transport another's wildlife without the valid license and permit holder present. This provision does not apply to authorized enforcement persons who, in the course of their duties, may be required transport seized wildlife.

X. Fishing

10-1. *Seasons*. The fishing season shall be continuous (year-round) unless specific seasons are established in accordance with article 4-2 of these rules. Further, fishing hours are not limited.

10-2. *Possession and Bag Limits*. Persons fishing shall comply with any possession, size and bag limits applicable to fish as established in accordance with article 4-2 of these rules.

10-3. *Fishing Restricted to Authorized Methods*. No person may take or kill fish by any method other than rods, lines and bare hooks, baited fish hooks, nets, spears, use of hands, and bows/arrows, except that bows/arrows may not be used on rough fish. For the purpose of this section, rough fish means carp, all sucker species and sheep head.

10-4. *Firearm Restriction*. No firearms may be used while fishing.

10-5. *Trespass*. No person may fish on private waters without permission from the owner or occupant. No person may fish on Tribal, state, or federal refuge waters or protected waters.

10-6. *Trading of Fish*. All fish caught or taken by any means may be traded, provided that persons shall comply with possession and bag limits at all times, regardless of trading.

10-7. *Ice Fishing*. Ice fishing holes may not be larger than ten inches (10") in diameter. While ice fishing, a person may not use more than four (4) fishing lines at one (1) time.

10-8. *Attending Lines* – Lines may not be left unattended.

XI. General Regulations

11-1. Persons may not:

(a) Hunt with a handgun if under the age of eighteen (18) unless under the immediate supervision of a parent or responsible adult.

(b) Transport, deliver, receive, or offer to deliver or receive for transporting any wildlife or part thereof at any time other than during the open season and three (3) calendar days after.

(c) Exceed daily bag or possession limits, or possess wildlife above or below the size limits established in accordance with article 4-2 of these rules.

(d) Possess any live wildlife unless authorized by the Department.

(e) Hunt species for which hunting seasons are not established, hunt wildlife during the closed season, or hunt wildlife in a refuge/closed area.

(f) Hunt any species more than fifteen (15) minutes after sunset or more than thirty (30) minutes before sunrise during the gun deer season. Except during the gun deer hunting season, coyote, fox, raccoon and unprotected species may be hunted without hunting hour restrictions.

(g) Leave, deposit, place or throw on the waters, ice, shores of water or upon Tribal land, any empty receptacles containing bait, fish offal, fish carcasses, and/or fish parts.

(h) Catch, kill or take frogs and turtles except by the following authorized methods: hand, dip net, hook and line, or spear.

(i) Shine while in possession of a firearm, bow or crossbow.

(j) Hunt in a party of more than ten (10) persons.

XII. Health Advisory

12-1. Fish caught in Duck Creek, ducks, geese, and other wildlife may contain PCB's. Women and children are most at risk for health defects. Detailed information is available from the Oneida Conservation Department.

XIII. Enforcement

13.1. *Fine and Penalty Schedule.* Violation of the Hunting, Fishing and Trapping law and/or rules may result in the fines/penalties as provided in the Fine and Penalty Schedule, which is incorporated into these rules as Attachment B.

13.2. *Animal Assessments.* In the event the Board finds a violation of the Hunting, Fishing and Trapping law and/or rules, in addition to imposing a fine or penalty, it may also impose a wildlife protection assessment (civil recovery value) as provided in the Animal Assessment Schedule, which is incorporated into these rules as Attachment C.

FY-2017 Semi-annual report template

For Direct Report to the Oneida Business Committee

Legislative Operating Committee (LOC)

Purpose:

The Legislative Operating Committee (LOC) is the legislative arm of the Oneida Nation. It is made up of the five Oneida Business Committee members, who are not officers. The mission of the LOC is to enhance the capability of the Oneida Nation, to fulfill its sovereign authority, to review and enact its laws, policies, and regulations in a planned and orderly manner. The Legislative Reference Office (LRO) supports the LOC with drafting and analyzing legislation, and carrying out legislative requirements.

Legislative Operating Committee Members

Brandon Stevens, LOC Chairman
 Tehassi Hill, LOC Vice Chairman
 Jennifer Webster, LOC Member
 Fawn Billie, LOC Member
 David Jordan, LOC Member

Budget

Funding Sources for FY-2017

<i>TRIBAL CONTRIBUTION:</i>	100%
<i>GRANTS:</i>	0%
<i>OTHER SOURCES:</i>	n/a

Status as of 3/31/17

Total Budget:	\$527,138
Budget as of 3/31/17:	263,570
Expenditures as of 3/31/17:	\$229,683

LRO Employees

<i>NUMBER OF LRO EMPLOYEES TOTAL:</i>	5 FTE's
<i>NUMBER OF LRO EMPLOYEES WHO ARE ENROLLED ONEIDA:</i>	3

Who we serve

The Legislative Operating Committee serves the Oneida Nation. The Legislative Reference Office serves the Legislative Operating Committee, the Oneida Business Committee, tribal departments, and parties interested in legislative items.

Update on up to Three (3) Strategic Goals for FY-2017

Please refer to your Annual Report submission for FY-2017 and provide an update on the Goals

GOAL 1

Goal: Develop the laws of the Oneida Nation that are clear, consistent, and straightforward; that reflect the voices of individual Tribal members.

Strategic Direction: Committing to Build a Responsible Nation

Practical Vision: Accountable & Effective Governmental Design

Update on Goal:

The Active Files List is the list of legislative items, GTC Petitions, and Rules that the LOC is working on at any given time.

At the end of April 2017, the Active Files included;

- 41 open legislative items
- 36 completed legislative items
- 15 items denied or removed from Active Files List
- 6 open administrative items
- 19 completed administrative items
- 8 certified Rules

Laws adopted or amended October 2016- April 2017:

Conflict of Interest law emergency amendments (1), Election law amendments, Drug and Alcohol-Free Workplace amendments, Endowments law amendments, Per Capita law amendments, Conflict of Interest permanent amendments (2), Budget Management and Control law, Real Property amendments, Tobacco amendments, Hunting, Fishing and Trapping amendments, Landlord-Tenant emergency amendments, Oneida Nation Seal and Flag law, Community Support Fund amendments, Drug and Alcohol-Free Workplace Policy emergency amendments, Leasing amendments, Back Pay amendments, Election emergency amendments extension, Vendor Licensing amendments, Landlord-Tenant law, Eviction and Termination law, Mortgage and Foreclosure law, Conflict of Interest Policy emergency amendments (3).

GOAL 2

Goal: Increase community participation in the legislative process.

Strategic Direction: Advancing On^yote?a.ka Principles

Practical Vision: An Engaged Community

Public Meetings are held in an effort to invite public participation in our lawmaking process, and they are required by the Legislative Procedures Act. Public Meetings are generally held at the Norbert Hill Center, in the Business Committee Conference Room. They are a chance for anyone to provide comment on pending legislation. There is also a public comment period- which allows anyone to provide comments to the LOC in writing.

The most useful public comments focus on a specific area of the proposed law detailing the issue of concern. All comments are considered by the LOC, but not all comments result in changes to the proposed legislation. Public meeting notices and public comment review can be found on the Oneida Register web site. Fourteen public meetings have been held since October 2016. In addition to the required public meetings, the LOC held 7 Employee Meetings in January and February 2017, to discuss the proposed Employment Law with tribal employees

GOAL 3

Goal: Develop and promote laws that deliver maximum benefit to the Oneida membership while remaining fiscally responsible.

Strategic Direction: Committing to Build a Responsible Nation

Practical Vision: Accountable & Effective Governmental Design

Update on Goal:

The Legislative Procedures Act requires that laws that are drafted or amended be analyzed in three ways. These methods are designed to identify legal, legislative, policy, and fiscal considerations:

1. **Legislative Analysis:** A legislative analysis is required for all proposed laws, bylaws, and amendments, and emergency legislation. The analysis is an unbiased review of proposed legislation intended to inform readers of the legislative intent of a proposal and its effect. They often include considerations that the LOC uses to discuss options and make policy decisions.
2. **Fiscal Impact Statement:** A fiscal impact statement is meant to analyze and estimate the implementation costs of proposed legislation. They are developed by the Finance Department and all legislation requires a fiscal impact statement, except emergency legislation as specified in the Legislative Procedures Act request.
3. **Statement of Effect:** A Statement of Effect contains legal and policy analysis which explain the effect of adopting a law.

LOC Meetings

1st and 3rd Wednesday of the month.

Meeting Location: Norbert Hill Center, Oneida WI, Business Committee Conference Room

Meeting Time: 9:00 a.m.

Meetings are OPEN.

LOC MEMBERS: Brandon Stevens, Chairman, Tehassi Hill, Vice-Chairman, Jennifer Webster, Member, Fawn Billie, Member, David Jordan, Member.

MAIN CONTACT: LOC Chairperson

MAIN PHONE: 920-869-4376

MAIN EMAIL: LOC@oneidanation.org

MAIN WEBSITE: www.oneida-nsn.gov/LOC and www.oneida-nsn.gov/Register



The 2014-2017 Legislative Operating Committee L-R: David Jordan, Fawn Billie, Brandon Stevens- LOC Chair, Jennifer Webster, and Tehassi Hill- LOC Vice-Chair.

May 2017

May 2017

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June 2017

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Apr 30 - May 6	Apr 30	May 1	2	3	4	5	6
			3:00pm 4:00pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner	12:00pm 3:00pm Child Welfare Law Public Meeting (BC_Conf_Room) - Clorissa N. Santiago		
May 7 - 13	7	8	9	10	11	12	13
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
May 14 - 20	14	15	16	17	18	19	20
			6:00pm 10:00pm GTC (Radisson)	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniqu 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC	12:00pm 3:00pm Oneida Business Committee Meetings Law and Workplace Violence Law		
May 21 - 27	21	22	23	24	25	26	27
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill			
May 28 - Jun 3	28	29	30	31	Jun 1	2	3

June 2017

June 2017							July 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3							1
4	5	6	7	8	9	10	2	3	4	5	6	7	8
11	12	13	14	15	16	17	9	10	11	12	13	14	15
18	19	20	21	22	23	24	16	17	18	19	20	21	22
25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	May 28	29	30	31	Jun 1	2	3
May 28 - Jun 3							
	4	5	6	7	8	9	10
Jun 4 - 10			3:00pm 4:00pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner			
	11	12	13	14	15	16	17
Jun 11 - 17				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	18	19	20	21	22	23	24
Jun 18 - 24			3:00pm 4:00pm LOC prep 6:00pm 10:00pm GTC (Radisson)	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniqu 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC			
	25	26	27	28	29	30	Jul 1
Jun 25 - Jul 1				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill			