

INDEX TO CHAPTER 6

PERMITS: DRAFTING, ISSUING AND CANCELLING

DIRECTIVE TITLE AND NUMBER		PAGES
Directive 6-1:	Permits - General	3-9
	Annex A: Permit Provisions	11-17
	Annex B: Detailed Checklist	19-23
Directive 6-2:	Subsection 28(2) Permits	24-27
Directive 6-3:	Memoranda of Understanding (MOU) and Letter Permits	28-29
Directive 6-4:	Disposal Permits (Subsection 58(4))	30-32

Directive 6-1

Permits - General

1. Purpose

- 1.1 This directive provides general information on the drafting, issuance and cancellation of all permits over reserve lands. The directives which follow in this chapter discuss the specific kinds of permits used and the unique policy and procedural concerns which may apply to them.

2. General

- 2.1 A permit allows the permittee to use and occupy specific reserve land by authorizing a limited interest in land for a limited time. For permits issued on reserve land, the Permitter is the federal Crown.
- 2.2 A permit has the following characteristics:
- a) it does not grant exclusive possession of land;
 - b) it may grant a limited interest in reserve land, such as an easement (as with hydro utilities), although it may give a lesser use (such as cattle grazing);
 - c) the term is usually short, but may be for longer periods so long as the term is able to be clearly determined.
- 2.3 Departmental staff must ensure that the permit process complies with the policy and procedure contained in this chapter. In addition, lands officers should carefully document all government dealings with the First Nation and the permittee.
- 2.4 The following kinds of permits are issued under the *Indian Act*:
- a) permits for the use and occupation of non-designated reserve lands issued under ss. 28(2) (see Directive 6-2);
 - b) permits for the removal of sand, gravel, clay and other nonmetallic substances issued under ss. 58(4) (see Directive 6-4);

- c) permits issued to other government departments as memoranda of understanding (MOUs) or letter permits under the authority conferred by subsection 28(2) of the *Indian Act* (see Directive 6-3); and
- d) permits issued under ss. 53(1) pursuant to designations.

3. Authorities

3.1 Permits may be issued under ss. 28(2), ss. 53 (1), or ss. 58(4), of the *Indian Act*.

3.2 Subsection 28(2) of the *Indian Act* states that:

28(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

3.3 Subsection 53(1) of the *Indian Act* states that:

53(1) The Minister or a person appointed by the Minister for the purpose may, in accordance with this Act and the terms of the absolute surrender or designation, as the case may be,

- (a) manage or sell absolutely surrendered lands; or*
- (b) manage, lease or carry out any other transaction affecting designated lands.*

3.4 Subsection 58(4) of the *Indian Act* states that:

58(4) Notwithstanding anything in this Act, the Minister may, without an absolute surrender or a designation

- (a) dispose of wild grass or dead or fallen timber; and*
- (b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, or, where that consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, renewable only with the consent of the council of the band.*

4. Policy

- 4.1 The consent of the First Nation council must be obtained before the granting of any permit.
- 4.2 Prior to the commencement of negotiations, the lands officer advises the First Nation council and the prospective permittee that:
- a) the permit cannot grant exclusive possession and the rights given must be consistent with the permitted use given;
 - b) the permit may contain specific authority for cancellation by the Minister, particularly where the permit gives only a licence;
 - c) compensation for permits is based at a minimum on fair market value, paid as fees, and must be reviewed at intervals not exceeding five years;
 - d) an environmental assessment of a project according to the *Canadian Environmental Assessment Act (CEAA)* is required before issuing a permit for the purposes of enabling a project to be carried out in whole or in part (see Chapter 12 of this manual for more information).
- 4.3 Since a permit does not grant exclusive possession, more than one permit for a parcel of land may be issued to different parties or the same party for different purposes, as long as the uses do not conflict.
- 4.4 Permits for the use and occupation of reserve lands must contain certain provisions. Many of these provisions are mandatory and contain wording which is non-negotiable. Other provisions may be open to negotiation on the way they are dealt with in the contract. Further, depending on the use, other optional provisions may also be included to fit the particular situation. Annex A contains a description of many of these provisions.
- 4.5 In rare circumstances, an interim use and occupation permit may be issued under ss. 28(2) as a preliminary step in the taking of lands for public purposes under section 35 or the designation of lands under section 38. Refer to Chapter 9 for further information.
- 4.6 Refer to Chapter 8 for information on monitoring and compliance.

- 4.7 The permit should contain provisions for the cancellation of the contract for breach of its terms. It should, however, be noted that the cancellation of a permit is a serious step which must not be undertaken without first consulting with the Department of Justice Legal Services (DOJ), the First Nation, and/or the locatee.
- 4.8 Cancellation of the permit may be appropriate when:
- a) the permittee has failed to pay the fees due under the permit;
 - b) the permittee has failed to observe covenants set out in the permit;
 - c) the control or ownership of a permittee has changed and there are no provisions for assignment; or,
 - d) the permittee has died and there are no provisions for assignment.
- 4.9 If the Region has determined, after consultation with DOJ, that there are valid grounds to cancel a permit, it must consult with the First Nation before making a decision. The views of the First Nation and/or the locatee should be confirmed in writing.
- 4.10 A permit may only be relinquished with the consent of the First Nation council and the approval of the Minister.

5. Process

- 5.1 This section provides an overview of the permit process. Refer to Annex B for a detailed procedural checklist.
- 5.2 **Preliminary Steps:** Before initiating the permit process, the following procedural steps must be completed:
- a) confirm that the proposed use falls within the scope of the statutory authority being relied upon (ss. 28(2), ss 53(1) or ss. 58(4)) of the *Indian Act*;

Preliminary Steps (continued)

- b) brief the First Nation council and the permittee on the scope of the permit and the mandatory provisions. The First Nation council and the proposed permittee (proponent) should be provided with a copy of the permit applicable to the proposed use. If a *CEAA* environmental assessment has been conducted and mitigation is required, additional wording or clauses should be added before the draft permit is sent to the proponent. If you are at a preliminary discussion point, both the FN and the proposed proponent should be aware that additional clauses could be added if during review of the *CEAA* assessment or during negotiations other concerns arise.
 - c) the proposed permittee pays for and performs an assessment of the environmental effects of the project, according to the *CEAA* and its regulations. The responsible officer must ensure that a screening of the project is done and that an environmental assessment decision is made as required by the *CEAA* (see Chapter 12 of this Manual for additional information);
 - d) conduct a search to ensure that there are no previous conflicting encumbrances on the subject lands. If a conflicting use exists, obtain the written consent of the prior encumbrance holder and a written recommendation from the First Nation council (i.e. BCR);
 - e) the First Nation council and/or the locatee may negotiate the terms of the permit with the proponent. These terms would include fee, location, period, but substantial changes to the language in the document, must be reviewed by DOJ. It is, therefore, recommended that the First Nation and/or the locatee keep the department apprised of their negotiations. The federal Crown is the permittor and will have the ultimate decision as to whether or not the proposed terms are acceptable;
 - f) obtain a band council resolution (BCR) from the First Nation council requesting that the Minister issue the proposed permit pursuant to the applicable statutory authority.
- 5.3 **Drafting:** Draft the permit using standard documentation and clauses, i.e. Departmentally approved standard forms. Land management officers should consult with DOJ when the standard clauses or approved forms are inappropriate for a particular situation.

5.4 **Issuing:** The following steps are involved in issuing a permit:

- a) review the draft permit for necessary terms and conditions and compliance with policy requirements;
- b) obtain an appraisal report where appropriate, and have it reviewed by Public Works and Government Services Canada, when required, to confirm that the permit compensation is, at a minimum, fair market value;
- c) submit the draft permit to DOJ for review where appropriate;
- d) the permittee executes the permit and the authorized regional officer executes the permit;
- e) register the executed permit in the Indian Land Registry and the Environmental Assessment in the Federal Environmental Assessment Index;
- f) the registered permit is sent to the permittee, the First Nation and, if applicable, the locatee(s)

5.5 **Monitoring and Compliance:** Refer to Chapter 8 for procedure relating to monitoring and compliance.

5.6 **Cancellation:** The cancellation procedure for a permit is similar to the procedure for cancellation of leases set out in Chapter 7-7. These steps can be summarized as follows:

- a) verify the facts respecting the grounds for cancellation;
- b) confirm whether there are provisions in the permit to address the breach ;
- c) obtain the First Nation's (including Locatee's where applicable) views of the proposed cancellation in writing;
- d) consult with Department of Justice (DOJ);
- e) the officer authorized under the current regional delegation of *Indian Act* authority, or the First Nation if it is exercising land management powers, gives the permittee notice of the default by registered mail. The notice should set out specific details of the default and give the permittee a deadline within which to remedy the situation;

Cancellation (continued)

- f) verify whether the permittee has cured the default before the deadline given;
- g) the regional office sends the permittee, by registered mail, a cancellation notice. The notice is signed by the officer exercising the Minister's delegated authority under the current delegation of the *Indian Act* authority. A copy of the notice must also be sent to the First Nation (including locatees where applicable);
- h) conduct follow-up steps to ensure the permittee has vacated the land and complied with any outstanding permit obligations, such as any decommissioning measures identified in the permit;
- i) register the notice of cancellation with the Indian Lands Registry.

6. Implementation

- 6.1 This chapter replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

7. References

- 7.1 Besides the *Indian Act*, you may want to consult:
- a) the Indian Lands Registration Manual;
 - b) the Minerals Policy and Procedures Manual;
 - c) Chapter 12 of this Manual;
 - d) CEAA and regulations; or
 - e) CEAA's Responsible Authority Guide (November 1994).

Chapter 6

Directive 6-1: Permits - General

Annex A: Permit Provisions

Annex A

Permit Provisions

1. General

- 1.1 Permits for the use and occupation of reserve lands must contain certain provisions. Many of these provisions are mandatory and contain wording which is non-negotiable. Other provisions are mandatory, but the manner in which they are dealt with may be open to negotiation. Other optional provisions may also be included to fit the particular situation.

2. Mandatory Provisions

- 2.1 The following provisions should be addressed when drafting a permit or amending a departmentally approved standard permit:
- a) **Corporate Status:** A corporate entity must show, by submission of the current year's documentary evidence, that it is in good standing, ie: a "Certificate of Good Standing", under the provincial or federal legislation governing its status.
 - b) **Land Status:** The status of the proposed permit area must be such that the Minister has authority to deal with it in the proposed manner.
 - c) **Registration:** All permits must be submitted to the Registrar of Indian Lands for registration.
 - d) **Indemnification:** The permittee must indemnify and hold harmless the Crown against all costs, claims and demands arising from the permittee's activities on the reserve.
 - e) **Taxes:** The permittee must agree to pay all taxes, levies, etc. payable to any authority because of its use and occupation of reserve land.
 - f) **Compliance with Laws:** The permittee must agree to comply with all applicable federal, provincial or municipal laws, bylaws, rules, regulations, ordinances, First Nation bylaws or other relevant standards, including CEPA, CEAA, the *Fisheries Act* and any other laws related to environmental protection.

Mandatory Provisions (continued)

- g) **Mineral, Oil and Gas Rights:** The Crown reserves the right to search for, remove and dispose of all minerals, oil and gas to be found in, upon or under the reserve lands, except to the extent that the removal or disposal of nonmetallic minerals has been dealt with in a ss. 58(4) permit.
- h) **Authority:** The permit must refer to the statutory provision under which it is issued. **Note:** Where a First Nation is exercising s. 53 or s. 60 land management authority, the particulars of the Order in Council or Ministerial Letter, with the *Indian Act* authority, should be recited.
- i) **Band Council Resolution (BCR):** The permit must recite and reference the BCR approving the permit application.
- j) **Locatee:** The permit must recite and reference the name of the locatee, their band number and the registration number of their Certificate of Possession; if applicable.
- k) **Access:** The permit must provide reasonable access to the Minister or any person duly authorized by him or her to examine the operations on the premises.
- l) **Artifacts:** The permittee must agree to report finds of a historical, anthropological or cultural nature to the First Nation and to cease all activities on the permit area in which the articles are discovered until further notice.
- m) **Parties:** The permit must clearly identify the parties. The permit will set out the full legal name of the permittee, designation of signing officer and the permittee's address. Corporate permittees should also include the jurisdiction of incorporation and the instrument authorizing the entering into of land transactions.
- n) **Land Description:** A full, identifiable description must be included and it must conform with the requirements of the current Interdepartmental Agreement Respecting Legal Descriptions on Indian Lands.
- o) **Term:** Set out the commencement date of the permit, the length of time and the termination date.

Mandatory Provisions (continued)

- p) **Compensation:** At a minimum, compensation must reflect fair market value. Set out the amount and the period of payment (e.g. weekly, monthly, annually, etc.). Where the compensation depends on a calculation, the permit must include specific instructions defining the method of calculation. The permit should specify compensation review periods, which must occur at least every five years. If the compensation is less than fair market value, Band Council and/or locatee consent must reflect this. Canada may wish to obtain a certificate of independent legal advice from the Band Council to ensure that the decision to accept less than fair market value is a fully informed decision. Further, Canada may wish to seek a release from the Band Council, releasing Canada from any and all claims that could arise from the granting of a permit for less than fair market value.
- q) **Use:** The permit must clearly define the allowable use of the permit area. Prohibited uses may be specified where appropriate.
- r) **Notice Addresses:** The permit should identify addresses for giving notice to the parties.
- s) **Maintenance:** The permit should identify standards of maintenance, including provision for dangerous objects, noxious weeds, rubbish, waste and nuisance where appropriate.
- t) **Cancellation:** The permit must specify those actions or defaults which may result in its cancellation, without restricting the Crown's right to cancel the permit at will.
- u) **Default:** The permit must provide that, upon default, compensation due and payable are collectable.
- v) **Insurance:** The permit must include an undertaking by the permittee to maintain public liability insurance and if applicable, fire insurance for 100% replacement. The permittee must also ensure that Her Majesty is a named insured on the policies.

2.2 Optional Provisions:

- a) **Standards:** The permit should identify governing construction, health and safety standards. Provision should also be made for resolving conflicts between standards, who will inspect, who pays for inspections and remedies for failure to meet standards.

Optional Provisions (continued)

- b) **Performance Requirements:** Performance requirements should be set out with provisions for inspections, reporting and remedies for noncompliance.
- c) **Fencing:** Fences and locks are only acceptable on permit areas where appropriate (i.e. for safety and security reasons, or for agricultural grazing purposes).
- d) **Damages:** Provision should be made for a remedy for damage caused to the reserve lands by the permittee.
- e) **Improvements:** The permit should identify who owns any improvements made to the land after termination of the permit.
- f) **Dispute Resolution:** The permit may specify a dispute resolution mechanism to resolve disagreements between the parties regarding the application of the permit provisions.
- g) **Fisheries Protection:** If the operations of the permittee may affect any fish bearing stream or water body, the permittee may be required to undertake specific protective measures or obtain a permit or prior approval from the Department of Environment and Resource Management or Department of Fisheries and Oceans.
- h) **Miscellaneous provisions:** when the Permit area has other permissible uses under other registered instruments or permits, they should be referred to in the new permit.
- i) **Assignment provisions:** if there is to be an option for the assignment of the permit, the Lands Officer, with the assistance of DOJ if required, should include the mechanism for that provision, preferably using a previously approved departmental precedent.
- j) **Park Royal Clauses**

The Permittee and the Minister mutually covenant and agree that this Permit is given under section 28(2) of the *Indian Act* and the rights given hereby shall be construed as a licence only and shall not be deemed to grant, convey or confer on the Permittee any right "*in rem*" or any estate or interest in the title to the land.

Park Royal Clauses (continued)

Notwithstanding anything in this Permit contained, the Permittee on behalf of itself, its officers, servants, agents, tenants, licensees and invitees acknowledges and agrees that this Permit does not confer or give rise to any greater right or rights upon the Permittee, its officers, servants, agents, licensees and invitees than the Minister is authorized to confer by section 28(2) of the *Indian Act*.

Chapter 6: Drafting, Issuing and Cancellation of Permits

Directive 6-1: Permits - General

Annex B:

Detailed Checklist

Annex B Detailed Checklist

1.	The Lands Officer verifies that the proposed use is one which is consistent with the nonexclusive use of reserve land and is otherwise appropriate for the statutory authority under which the permit will be issued (see Chapter 2, Directive 2-2).	
2.	The Lands Officer conducts an abstract search to identify all interests which the proposed permit will affect.	
3.	<p>The First Nation council issues a BCR to INAC Field which should include the following:</p> <ul style="list-style-type: none"> a) a description of the permit area in the manner prescribed by the Interdepartmental Agreement Respecting Legal Descriptions of Indian Lands, as amended from time to time; b) proof of a locatee's consent to the permit, when the permit area includes land in the lawful possession of an individual locatee; c) the proposed use should be clearly identified; d) the term of the permit; e) the permit compensation; f) a request that the Minister issue a permit pursuant to the appropriate <i>Indian Act</i> provision; 	

4.	The Lands Officer ensures that an environmental assessment has been conducted under the CEAA, where required.	
5.	The Lands Officer verifies that the permit compensation is at a minimum fair market value. This may involve an Appraisal Report which is provided by the proponent and reviewed by Public Works and Government Services Canada. If the First Nation Council has knowingly agreed to a value less than the fair market value, the Department should obtain a written acknowledgement from the First Nation which may include a Certificate of Independent Legal Advice and a release of claims pertaining to the compensation.	
6.	When provisions are negotiated and changes are made to a precedent document, the Lands Officer must determine if the changes require the review of DOJ.	

Note: Items 7 and 8 apply only to regions with Field Offices. Those provinces that have only the Region, disregard.

7.	<p>INAC Field Office issues a Letter of Recommendation to the Region:</p> <ul style="list-style-type: none"> a) describing the proposed transaction; b) recommending the issuance of a permit; c) attaching BCR; d) attaching the draft permit. <p>Note: If the delegation rests with the Field Office go to step 8 and substitute Field Office for Region.</p>	
8.	Region reviews the draft permit to ensure that the permit includes the mandatory provisions (and any appropriate optional provisions) set out in Annex A to this directive. If there are substantial changes to the standard permit it would be reviewed by DOJ; see Directive 6-3, Section 5.2.	

9.	The Lands Officer forwards four (4) copies of the permit to the permittee for execution.	
10.	The Lands Officer receives the executed copies of the permit from the permittee.	
11.	The departmental officer, authorized to execute the permit under the current regional delegation of <i>Indian Act</i> authorities or the First Nation, if it is exercising land management powers and are authorized by their Order, will execute the original copies of the permit.	
12.	The Lands Officer sends an executed original of the permit to the Indian Lands Registry for registration, with the original BCR, Locatee consent (if applicable), a sketch of the subject area (if applicable), acknowledgement of corporation (if applicable) along with any other documentation which supports or is referred to in the Permit.	
13.	The Lands Officer receives registration particulars from the Indian Lands Registry.	
14.	INAC Field Office sends an executed original of the permit to the permittee and the First Nation, with the particulars of registration endorsed thereon. If applicable, a copy should be sent to the locatee(s) and a copy kept in the Lands Officer's file.	

Directive 6-2

Subsection 28(2) Permits

1. Purpose

- 1.1 This directive discusses the nature and scope of ss. 28(2) permits and the unique policy considerations applicable to them. The agricultural permit is discussed as one example of a ss. 28(2) permit.

2. General

- 2.1 A ss. 28(2) permit is the general permit for the non-exclusive use and occupation of reserve lands.
- 2.2 Review Directive 6-1 for general information applicable to ss. 28(2) permits.

3. Authorities

- 3.1 Subsection 28(2) of the *Indian Act* states that:

28(2) The Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

4. Policy

- 4.1 Refer to Directive 6-1 for the general policy principles applicable to ss. 28(2) permits.
- 4.2 The Supreme Court of Canada in *Opetchesaht v. B.C. Hydro and the Queen* addressed the legal nature of a subsection 28(2) permit. The permit can grant a limited interest in land for a limited period of time.
- 4.3 **Interest in Land**
- a) The ss. 28(2) permit can be used to grant an interest in land to the permittee. Such interest has to be limited and cannot amount to exclusive possession;

Interest in Land (continued)

- b) Where an exclusive interest in land is determined to be unnecessary, a ss. 28(2) permit should be used;
- c) Permits are used for easements. When a permit is used for utility lines, the easement can be granted regardless of whether the utility line services the reserve (distribution line) or only crosses it (transmission line). In these circumstances compensation is reflected accordingly;
- d) Consult with DOJ and the Lands Directorate at Headquarters if it is not clear whether the use contemplated is one authorized by ss. 28(2), particularly if exclusive possession is in any way contemplated;

4.4 Less than an Interest in Land

Although it is understood that permits do not grant exclusive use, in some cases the use does not require any interest in the land. In these cases, the Lands Officer should ensure that the permit only authorizes those rights actually needed by the permittee.

4.5 Duration of Permit

- a) Where possible, the duration of ss. 28(2) permits should have a defined period of years, months, etc. However, it is possible for a ss. 28(2) permit to have an indeterminate period so long as the termination of the permit is defined by the happening of a reasonably determinable event. In the *Opetchesaht* case, the Supreme Court found that "a period of time required for the purpose of an electric power transmission line constituted such a determinable event." For permits with an indeterminate term, we generally use the language "for as long as required".
- b) The duration of a ss. 28(2) permit is best kept as short as possible depending on the particular circumstances with the consent of the First Nation council.

4.6 Non-Permissible Uses

The ss. 28(2) permit is not available when what is contemplated is a sale, disposition, long term lease or alienations permanently disposing of any Indian interest in reserve land. For these a surrender or designation is required. (See Chapter 7).

4.7 **Assignment**

- a) The ability to assign a subsection 28(2) permit must be considered on a case by case basis taking into consideration the circumstances and nature of the interest being granted. For example, a subsection 28(2) permit granted to a Crown entity, including other departments and provinces would not be assignable. Generally, permits that do not grant an interest in land are not assignable.
 - b) When a subsection 28(2) permit can be assigned that assignment must be subject to the written consent of the Minister.
- 4.8 Long-term permits with prepaid compensation should be avoided. Permits for any term length should have periodic review of compensation based on market value. Short terms are preferable, but this should be worked out on a case by case basis in consultation with the First Nation.
- 4.9 In the case where pre-payment is preferred by the First Nation and has been stated as such in a letter or BCR from the First Nation, a Certificate of Independent Legal Advice should be obtained from the First Nation, as well as a release of claims pertaining to the pre-payment of the permit.

5. **Locatee Lands**

- 5.1 The preferred authority for granting a right of use and occupation over locatee lands is a locatee lease under ss. 58(3). Refer to Directive 7-3. However, a general ss. 28(2) permit may involve locatee lands where the permit benefits the First Nation members as a whole, interference with the locatee's interest is minimal, and the individual locatee has agreed in writing to the granting of the instrument.

6. **Agricultural Permit**

- 6.1 In addition to the permit terms and conditions set out in Annex A of Directive 6-1, an agricultural permit may contain the following provisions:
- a) the specific agricultural use to be permitted;
 - b) the farming and soil conservation practices to be followed by the permittee;
 - c) the crop schedule to be followed;

Agricultural Permit (continued)

- d) a general undertaking to comply with any applicable environmental standards;
- e) a provision addressing environmental concerns arising from agricultural use, including any mitigation requirements resulting from the environmental assessment under the *CEAA*;
- f) a recognition that the permittee is solely responsible for controlling any livestock.

7. Process

- 7.1 Refer to Directive 6-1 for the procedural steps involved in issuing a permit.

8. Implementation

- 8.1 This chapter replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

9. References

- 9.1 Besides the *Indian Act*, you may want to consult the Indian Lands Registration Manual.

Directive 6-3

Memoranda of Understanding (MOU) and Letter Permits

1. Purpose

- 1.1 This directive describes the nature and scope of memoranda of understanding (MOUs) and letter permits.

2. General

- 2.1 The information set out in Directive 6-1, including the policy and procedure, applies to memoranda of understanding and letter permits.
- 2.2 The MOU and letter permit are used when the proposed permittee is another department of the federal or provincial Crown.
- 2.3 These kinds of permits serve the same purpose, which is to record the understanding of the terms and conditions upon which the Minister authorizes the use and occupation of reserve lands by another government department.
- 2.4 Letter permits and MOUs differ in form only. MOUs are developed to standardize the terms of particular kinds of commonly used letter permits. For example, standardized MOUs have been prepared for the use and occupation of reserve lands by Health Canada and the RCMP.

3. Authorities

- 3.1 The *Indian Act*, subsection 28(2), is the authority for issuing a letter permit or signing a MOU.

4. Policy

- 4.1 As with any other permit, the consent of the First Nation council is a necessary precondition to the signing of a MOU or the issuance of a letter permit.
- 4.2 It is the policy of the Minister to satisfy all reasonable permit requests from other branches of the federal or provincial governments.

Policy (continued)

- 4.3 The terms and conditions set out in Annex A of Directive 6-1 should be reviewed for their applicability when drafting MOUs and letter permits.
- 4.4 A letter permit or MOU should be signed by the permittee and, for the Permitter, by the duly authorized officer pursuant to the current regional delegation of *Indian Act* authorities.

5. Process

- 5.1 The procedural steps set out in Annex B to Directive 6-1 apply to memoranda of understanding and letter permits.
- 5.2 MOUs and letter permits should be drafted following existing standards. If the permit deviates from the standards, DOJ may be asked to review the changes and advise of any risk to the crown. HQ should also review for possible policy implications.

6. Implementation

- 6.1 This chapter replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

7. References

- 7.1 Besides the *Indian Act*, you may want to consult:
- a) Chapter 12 of this Manual
 - b) the Indian Lands Registration Manual

Directive 6-4 Disposal Permits (Subsection 58(4))

1. Purpose

- 1.1 This directive describes the nature and scope of disposal permits issued under ss. 58(4).

2. General

- 2.1 The information set out in Directive 6-1 applies to disposal permits.
- 2.2 A disposal permit is used to authorize the removal of wild grass, dead or fallen timber, sand, gravel, clay or other nonmetallic substances from reserve lands, where the permittee requires short-term use and does not intend to install permanent structures within the permit area.
- 2.3 The removal of natural resources without authorization is an offence under s. 93 of the *Indian Act*.
- 2.4 Cutting live timber from reserve lands requires a permit or licence issued under s.58(4) of the *Indian Act* and the *Indian Timber Regulations*. Refer to the Forestry Policy Manual for further details.
- 2.5 The Minerals Policy and Procedure Manual must be referred to for more information on permits issued under ss. 58(4)(b), for taking and disposing non-metallic substances on reserve lands.
- 2.6 Monies derived from the sale of wild grass, dead or fallen timber, sand, gravel, clay or other nonmetallic substances from reserve lands are to be deposited into the Band Capital account held in Ottawa.

3. Authorities

3.1 Section 58(4) of the *Indian Act* provides as follows:

58(4) *Notwithstanding anything in this Act, the Minister may, without an absolute surrender or a designation*

- (a) *dispose of wild grass or dead or fallen timber; and*
- (b) *with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, or, where that consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, renewable only with the consent of the council of the band.*

4. Policy

4.1 As with the other permits discussed in this chapter, the approval of the First Nation council is mandatory before a disposal permit will be issued under ss. 58(4).

4.2 The removal of materials from reserve lands should be compatible with the long range development plans of the First Nation.

4.3 The terms and conditions set out in Annex A of Directive 6-1 apply to disposal permits. In addition, the following terms, described in more detail in the *Minerals Policy and Procedure Manual*, may be included in the permit: surface rental, royalties, performance bonds.

4.4 An example of a disposal permit can be found in the *Minerals Policy and Procedures Manual*.

5. Process

5.1 The steps found in the *Minerals Policy and Procedures Manual* apply to disposal permits.

6. Implementation

6.1 This chapter replaces previous policy directives dealing with this subject matter and will come into force upon distribution.

7. References

7.1 Besides the *Indian Act*, you may want to consult:

- a) Indian Lands Registration Manual;
- b) Minerals Policy and Procedures Manual;
- c) Forestry Policy Manual; or
- d) Chapter 12 of this Manual.