April 2008

C&E Advice Bulletin

Guidance on

Timber Marking Unscaled Bundled Timber

With the repeal of section 84(2) of the *Forest Act* on March 31st, 2008, there is no longer a requirement for a timber mark to be "readily discernible" when the bundled timber is in the water.

Section 84(2) said:

> 84(2) If unscaled timber is floated in water or put into rafts in water, the person placing the timber in the water or putting it into rafts must ensure that the timber mark is readily discernible when the timber is in the water.

Section 84(1) of the *Forest Act* is still in effect. This subsection requires the holder of a timber mark and his agent to ensure that unscaled timber that is stored in decks or piles on Crown land or private land, or removed or transported from Crown land or private land, has been conspicuously marked in the prescribed manner with the timber mark that pertains to that land.

Section 5(2) of the Timber Marking and Transportation Regulation (TMTR) sets out the prescribed manner in which unscaled timber must be marked if the timber will be transported in bundles.

Section 5(2) says:

> 5(2) For the purpose of section 84 of the Act, before a person transports unscaled timber in bundles, either in rafts on the water or on a barge from which the bundles will be dumped into the water,
>
> (a) the correct timber mark must be legibly and conspicuously applied to
>
> (i) at least 2 log ends at both the front and back of each bundle using a hammer indentation, and
>
> (ii) each side of each bundle with at least one timber mark using paint, and
>
> (b) the correct bundle tag must be attached to at least 2 log ends at both the front and back of each bundle.

Section 5(2) does <u>not</u> require a timber mark to be readily discernible when the timber is in the water. It only requires a person to legibly and conspicuously <u>apply</u> the correct timber mark as set out in (i) and (ii) and to attach the correct bundle tag as set out in (b), before the person transports the timber.

In order to prove a contravention of section 84(1), you would have to show that the person either:

- did not do one or more of the things set out in 5(2)(a) or (b) before transporting the timber; or

- attempted to do the things set out in 5(2)(a) and (b) before transporting the timber but did them incorrectly.

It is important to note that while the person must ensure that the timber mark is applied legibly and conspicuously, the provision does not require that the timber mark be legible or conspicuous when the timber is in the water. The timber mark may or may not be legible or conspicuous when the timber is in the water. The test under section 5(2)(a) is whether the timber mark was applied in the manner described.

Sections 5(3) and 6 the TMTR should also be noted

Under section 5(3), a District Manager or Forest Officer can impose additional timber marking requirements if either considers it necessary or desirable to minimize the risk of timber loss. Before imposing additional requirements, the District Manager or Forest Officer should have formed an opinion that the risk of timber loss is unacceptably high in *the particular situation*. In other words, section 5(3) should not be used as a blanket provision to raise the timber marking bar in all situations.

Section 6 of the TMTR provides that where it is not feasible to apply the timber mark as required by sections 4 or 5 of the TMTR, a forest officer may direct that the timber mark be applied to the sides of the timber using crayon or paint. It would be improper, however, to use this section for the purpose of making a timber mark more discernable in the water. Section 6 can only be employed where it is not feasible to comply with sections 4 or 5 of the TMTR.

CONTACTS

For any questions regarding this bulletin, please contact:

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Guy Brownlee, Compliance and Enforcement Branch, at Guy.Brownlee@gov.bc.ca; or

John Harkema, Compliance and Enforcement Branch, at John.Harkema@gov.bc.ca

C&E Program Staff Bulletin 01 April 14, 2004

USE OF THE ENVIRONMENTAL REMEDIATION SUB-ACCOUNT [ERSA]

1. **What is ERSA?** ERSA is an account created to hold some but not all penalties levied under the *Forest Practices Code of British Columbia Act*, the *Forest and Range Practices Act*, and the *Forest Act*.

2. **How much is in ERSA?** That fluctuates year by year. Historically, it has been approximately $150,000.00 annually. The Ministry executive allocates a specific figure [last year it was a $139,000.00] and this year [04/05] we are making requests for a larger allocation. Total expenditures cannot exceed the total in the account.

3. **Why are we asking for more?** Historically, we [MOF] have never used up the allocation, however, we contemplate a greater need arising from the potential for due diligence defences to require the Crown to undertake some liabilities that may have previously remained with a licensee.

4. **What does all this mean to me?** You [a district or region] can apply to the account for money to pay for:
   - Carrying out work under section 74 (3) (b) of FRPA, or section 118 (3) (b) of the Code.
   - Doing work to mitigate or prevent environmental damage directly related to a contravention.
   - Extraordinary costs related to an investigation of contraventions, and
   - Hiring expert witnesses.

5. **How much can I apply for?** The Branch Director may approve expenditures up $50,000.00, the Assistant Deputy Minister up to $100,000.00, and expenditures >$100,000.00 go to Treasury Board for approval. Historically, investigation costs range from $1,000.00 to $15,000.00.

6. **What can't I use the money for?**
   - Salary or overtime costs for government employees,
   - Employee travel expenses associated with an investigation,
   - Remedial work in excess of the minimum necessary to return a site to a satisfactory condition, and
   - Repair or replacement of bridges or structures.

7. **Does there have to be a determination of a contravention before I can use the money for remedial work?** No, however, the work has to be directly related to a potential contravention.

8. **Does it have to be C&E that applies for the money?** No, not for remedial work, but yes for investigative purposes.

9. **What are some examples of what the money is used for?**
   - Hiring a land surveyor to survey a private/ Crown land boundary.
   - Barging costs for wood seized in a remote inlet.
   - Extraordinary stump cruises.
   - Conducting a survey related to an investigation where those skills are unavailable at the district or regional level.
   - Hiring an outside statistician to analyze FG surveys and provide an expert opinion.

10. **Okay, how do I apply?**
    1) you read Policy 16.24.
    2) you determine the costs.
    3) you draft a briefing note addressed to the Branch Director.
    4) you have the briefing note reviewed by the District Compliance Leader.
    5) the District Compliance Leader forwards the note to the Regional Compliance Leader.
    6) the Regional Compliance Leader forwards the note to the Branch Director.

11. **How long does this take?** Once the BD has the briefing note, he or she will either approve or not approve the request usually within 5 working days.

12. **How do we get the money?** You get the work done and pay for it, and then you JV Branch and Branch reimburses you. Alternatively, you may forward the invoices directly to Branch for payment.

13. **Have there been any problems in the past?** Yes, districts have applied and have had ERSA funds allocated. Then at fiscal year end, the district discovers district or regional funds that they wish to expend, then notifies Branch that the ERSA funds are no longer needed. This effectively compromises the whole program. It makes those funds unavailable for other districts while a particular district holds the allocation and discredits any argument that we need more money in the account. That is why, if you request the funds and they are approved, you are expected to utilize the funds unless extraordinary circumstances intervene.

C&E Program Staff Bulletin 02 April 14, 2004

INTERACTION WITH AND USE OF SUBJECT EXPERTS

Purpose

To establish procedures that Compliance and Enforcement (C&E) staff will follow when requesting subject area expert assistance for investigations.

Scope

Applies directly to C&E staff, and indirectly to those Field Services staff who provide subject expert support to the C&E program.

Preamble

The development of a results-based legislative regime under the *Forest & Range Practices Act* (FRPA) has created a less prescriptive environment that allows licensees more innovation and greater flexibility in delivering end results. To evaluate if intended results have been achieved, and required strategies have been carried out, compliance and enforcement activities may require considerable expert input from the onset of an investigation through to any administrative or quasi-criminal proceedings.

Consistent with C&E's independent yet integrated model and the roles and responsibilities matrices, subject expert input will enable C&E staff to get the benefit of an integrated organization while maintaining their investigative independence.

In addition to other defences, due diligence under FRPA (i.e. took precautions that an informed and reasonable person would be expected to take, consistent with the expectations of his/her peers), will be more complex. Complex investigations will require C&E staff to gather expert opinion and evidence regarding the level of due diligence exercised. When subject expert input is requested, it will be provided within a reasonable and prioritized manner.

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MOF CONTACT LISTS

The following list of subject expert contact names are attached to these procedures:

1. List of MOF Research Staff by Discipline
2. List of MOF Operational Subject Experts by Discipline

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List of MOF Research Staff by Discipline

Discipline	NIFR	SIFR	CFR	Branch
Hydrology – water quality, erosion, riparian, alluvial fans, climate analysis, deactivation	Dr. Dave Wilford David Maloney	Dr. Rita Winkler Dave Gluns Patrick Teti	Dr. Robert Hudson Paul Marquis	Dan Hogan
Geomorphology – landslides, water quality, alluvial fans, surface erosion, climate analysis, deactivation	Marten Geerstema Jim Schwab	Joe Alcock Tim Giles Dr. Peter Jordan	Dr. Denis Collins Tom Millard	Dan Hogan
Soils - site degradation, surface erosion	Stephane Dube Richard Kabzems Marty Kranabetter	Dr. Bill Chapman Dr. Mike Curran Graeme Hope	Paul Courtin	Dr. Shannon Berch Dr. Chuck Bulmer Gerry Still
Silviculture – partial cutting, veg management	Dr. Dave Coates Les Herring Richard Kabzems Phil LePage	Andre Arsenault Teresa Newsome Michaela Waterhouse	Brian D'Anjou Dr. Rod Negrave	Rob Brockley George Harper Dr. Louise de Montigny Keith Thomas

List of MOF Research Staff by Discipline (cont.)

Discipline	NIFR	SIFR	CFR	Branch
Ecology – biodiversity, eco classification, fire ecology, range ecology	Allan Banner Craig Delong Richard Kabzems	Ray Coupe Dennis Lloyd	Dr. Geoff Cushon	Dr. Roberta Parish Evelyn Hamilton Will Mackenzie Del Meidinger John Parminter Dr. Reg Hamilton (Range Ecology) Marvin Eng (Landscape Ecology)
Fisheries- riparian, habitat	None	None	None	Dr. Peter Tschaplinski
Wildlife Habitat – biodiversity, specific habitat requirements	Dr. Dale Seip Doug Steventon	Dr. Walt Klenner Harold Armleder Michaela Waterhouse	Louise Waterhouse	Dr. Bruce McLellan Fred Hovey

List of MOF Operational Subject Experts by Discipline

Discipline	NIFR	SIFR	CFR
Engineering - includes Harvesting Practices	Ed Cienciala Carl Erickson Ed Hoffmann	Brent Case (Eng Off) Ernie Carson (FE) John Thom (R/W) Gary McClelland (Bridges) Kevin Turner (Geotech) Barry Trendholm (Geotech) (WL) Brian Bently (FE) (WL) Les Thiessen (FE) (NEL) Jeff Townsend (FE) (NEL) Doug Nicol (Geotech) (NEL)	Hardy Bartle Hans Lehrke Stephen Ngo Dan Robek Chuck Rowan
Appraisals	John McClary	Jim Schafthuzizen Tracy Hendry Peter Graff	Steve Edwards

List of MOF Operational Subject Experts by Discipline (cont.)

Discipline	NIFR	SIFR	CFR
Billings			Stuart Messenger
Cruising – Includes Residue & Waste	Patrick Ellis	Dave Robertson Peter Semenoff (W/R)	Bruce Markstrom
Scaling	Brian Cornelis Patrick Ellis	Merva Lyons Bob Trudeau Andy Cosens	Bruce Walders
Entomology	Bob Hodgkinson Ken White	Lorraine MacLauchlan	Don Hepner
Pathology	Richard Reich Alex Woods	Lorraine MachLauchlan	Stefan Zeglan
Visual Quality	Luc Roberge	Peter Renne	Lloyd Davies
Silviculture	Susan Hoyles	Al Randall	Chuck Rowan
Veg Management	Susan Hoyles	Ivan Lister	Larry Sigurdson
Regen & F/G Surveys	Anna Monetta	Mike Madill	Brian D'Anjou
Seed Transfer	Anna Monetta		
Stocking Stnd's	Anna Monetta		
Information Systems	Anna Monetta		
Soil Disturbance	See Soils Research List	Graeme Hope	Paul Courtin Chuck Rowan
Geomorphology	Peter Egyir	Tim Giles Kevin Turner	Dennis Collins Jim Dunkley Tom Millard
Range	Perry Grilz	Francis Njenga Rick Tucker	None
Recreation	Gary Westfall	Fred Thiessen Jennifer Eastwood	
Resource Features			Paul Tataryn
Forest Policy			Chuck Rowan

C&E Program Staff Bulletin 03 May 10, 2004

USE OF SECTION 61 (1) OF THE FOREST AND RANGE PRACTISES ACT

Introduction

Section 61 (1) of the Act reads:

> ***Delivery of records***
> *61 (1) The minister may order the holder of an agreement under the Forest Act or the Range Act to produce to the district manager specified records that are related to an activity that requires a licence, a permit, a plan or an approval under the Acts or under the agreement.*

During the course of an investigation, where C&E requests information relevant to an investigation a Licensee may elect not to provide the requested documents such as diaries, production records, internal scale data, inspection reports, etc. Should these circumstances arise, and where the documents are relevant to an investigation, it may be appropriate to consider a section 61 (1) [FRPA] order.

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C&E Program Staff Bulletin 04 May 10, 2004

INTERVENTION, STOP WORK ORDERS AND REMEDIATION ORDERS

Purpose

The purpose of this bulletin is to provide staff with some direction and guidance respecting the difference between an **Intervention Order**, **Stop Work Order** and **Remediation Order**. This arises from an Intervention Order being a new authority under the *Forest and Range Practices Act*.

Intervention Order

The purpose of an *Intervention Order* is to provide a person delegated by the Minister (DM or RM/ not a forest official at this time) the authority to intervene in a forest practise regardless of whether or not a person is acting pursuant to an approved plan or licence agreement.

This would occur, for example, where a FSP is approved, however, the actions while compliant with the FSP may be leading to unforeseen circumstances that are not in the public interest or impacting other resources in a manner not recognized during the planning process.

> ***Power of intervention: general 77 (1)***
> *The minister, by order that meets the prescribed requirements, may require the holder of an agreement under the Forest Act or the Range Act to:*
>
> *(a) remedy,*
>
> *(b) mitigate, or*
>
> *(c) stop,*
>
> *in a manner and to the extent that is reasonable in the circumstances, an act or omission of the holder that, if the person does not take the measures or action ordered, the minister has reasonable grounds to believe will result in a contravention of the Acts and will or probably will cause*
>
> *(d) a catastrophic impact on public health or safety,*
>
> *(e) any prescribed event or circumstance that will result in a free growing stand required under this Act not being established, or*
>
> *(f) any prescribed event or circumstance having an adverse impact on the environment.*

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Stop Work Order

The essential difference between an *Intervention Order* and a *Stop Work Order* is that an Intervention Order is intended for use prior to an event, and a Stop Work Order is intended to be used where non-compliance has occurred and the activity is still underway.

The purpose of a Stop Work Order is to provide a forest official [C&E staff] with the authority to stop a forest practise where the forest official has reasonable grounds to believe the person may be acting contrary to legislation. The issuance of SWOs is guided by Ministry Policy 16.14 Stop Work Orders.

> ***Stop Work Order 66 (1)***
> *If an official has reasonable grounds to believe that a person is contravening a provision of the Acts, the official may order that the contravention stop, or stop to*

the extent specified by the order, until the person has a required licence, permit, plan, approval, variance, exemption or other authorization

Remediation Order

The purpose of a *Remediation Order* is to provide a designated decision-maker with the authority to order remedial works arising from a determination of non-compliance with legislation.

Remediation Order 74 (1)
If the minister determines that a person who is the holder of an agreement under the Forest Act or the Range Act has contravened a provision of this Act, the Forest Practices Code of British Columbia Act, or a regulation or standard made under either Act, the minister may order the holder to do work reasonably necessary to remedy the contravention.

Comparison Table

The following table also describes how these three types of orders within the legislation are similar yet distinct.

Order:	Stop Work	Remediation	Intervention
FRPA section:	**66**	**74**	**77 & 77.1**
Who/ Authority	Official	Minister/delegate [DDM]	77: Minister/delegate 77 (1): Minister
Why/ rationale:	Reasonable grounds to believe a person is contravening the legislation.	An agreement holder has contravened the legislation and remediation order will remedy the contravention.	No contravention: public interest as specifically described in the legislation.
What happens:	The SWO orders a person contravening the legislation to halt until authorized.	Provides specific details of remediation work that will be done by the agreement holder.	Make the person or agreement holder remedy, mitigate or stop the action/s.
How:	In writing.	In writing.	In writing.
To whom:	Person	Agreement holder.	Agreement holder and or person.
Who rescinds:	Official and or Minister's delegate through appeal process.	Review panel or Forest Appeals Commission via appeal process.	77: issuing delegate or Minister. 77 (1): Minister.

C&E Program Staff Bulletin 05 May 13, 2004

GUIDANCE TO C&E PROGRAM STAFF ON THE USE OF AN AGREED STATEMENT OF FACTS

Purpose

The purpose of this bulletin is to discuss the purpose of an *Agreed Statement of Facts*, how to obtain one, what one may look like, and how it would apply to any administrative hearing for the purposes of making a determination under section 71 (1) of the Forest & Range Practices Act (FRPA).

Introduction

An Agreed Statement of Facts (ASF) is a document that sets out a number of facts agreed to by two or more parties. In our world, this would be a written agreement between C&E program staff and the person(s) allegedly responsible for a contravention about some or all of the facts surrounding the alleged contravention. The ASF is intended to be jointly submitted to the Delegated Decision Maker (DDM) at an *Opportunity to be Heard* (OTBH).

The Agreed Statement of Fact

The purpose of an ASF is to reduce work, simplify the hearing process, and facilitate the DDM's decision making. Unless a DDM has good reason to "go behind" and ASF, he or she should accept the facts that have been agreed-to, as proven. This can save a significant amount of time at a hearing, as well as time and effort in package and hearing preparation. Presenting agreed facts to the DDM frees up time to spend on the contentious issues.

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C&E Program Staff Bulletin 06 June 1, 2004

USE OF SITE PLANS WITHIN THE C&E REGIME

Purpose

The purpose of this Bulletin is advise C&E program staff on the enforceability, options, and use of site plans by C&E program as an enforcement and or inspection tool.

To understand how we [C&E program staff] may use site plans we first need to be clear on the legislation.

Site Plans for Cutblocks and Roads

Section 10 of FRPA reads:

> ***Site Plans for Cutblocks and Roads***
> *1) Except in prescribed circumstances, the holder of a forest stewardship plan **must** prepare a site plan in accordance with prescribed requirements for any*
> *a) cutblock before the start of timber harvesting on the cutblock, and*
> *b) road before the start of timber harvesting related to the road's construction.*
> *2) A site plan **must***
> *a) identify the approximate locations of cutblocks and roads,*
> *b) be consistent with the forest stewardship plan, this Act and the regulations, and*
> *c) identify how the intended results or strategies described in the forest stewardship plan apply to the site.*
> *3) A site plan may apply to one or more cutblocks and roads whether within the area of one or more forest stewardship plans.*

- The *Administrative Remedies Regulation* (ARR) provides for a maximum penalty of $10,000.00 for non compliance with section 10 (1) of FRPA.
- There is no admin remedy for sections 10 (2).
- Non compliance with Section 10 of FRPA is not an offence, therefore it is not ticketable.

Site Plan Available to Public

Section 11 of FRPA reads:

> ***Site Plan Available to Public***
> *A holder of a site plan **must** make it publicly available on request at any reasonable time at the holder's place of business nearest to the area under the site plan.*

- The ARR provides for a maximum penalty of $10,000.00 for non compliance with section 11 of FRPA.
- Non compliance with Section 11 of FRPA is not an offence, therefore it is not ticketable.

Content of Site Plan

Section 34 of the *Forest Planning and Practices Regulation* (FPPR) reads:

> ***Content of Site Plans***
> *1) A person who prepares a site plan for an area referred to in section 29 (1) or (2) [free growing stands] of the Act **must** ensure that the plan identifies*
>
> *a) the standards units for the area, and*
>
> *b) the stocking standards and soil disturbance limits that apply to those standards units.*
>
> *2) A holder of a site plan **must** retain the plan until the holder*
>
> *a) has met the requirements in respect of the area to which the plan relates, or*
>
> *b) has been relieved under section 108 [government may fund extra expense or waive obligations] of the Act of the requirements in respect of the area to which the plan relates.*

- The ARR provides for a maximum penalty of $10,000.00 for non compliance with section 34 (1) of the FPPR.
- The ARR provides for a maximum penalty of $5,000.00 for non compliance with section 34 (2) of FRPA.
- Non compliance with Section 34 of the FPPR is not an offence; therefore it is not ticketable.

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C&E Program Staff Bulletin 08 June 8, 2004

USE OF THE TERM 'PRACTICABLE' UNDER THE *FOREST PLANNING AND PRACTISES REGULATION*

Introduction

According to the Oxford English Dictionary practicable means: "*that which can be done, feasible*".

The term 'practicable' inspired different opinions on its interpretation when it appeared in the *Forest Practises Code of British Columbia Act* (Act). It has now appeared again, this time in the *Forest & Range Practices Act* (FRPA) regulations, particularly the *Forest Planning and Practises Regulation* (FPPR). "Practicable" is often confused with "practical" so it is important that both be defined and explained in order to allow DDMs to make consistent decisions around these terms, and to assist C&E operational staff when assessing potential non-compliance in the field.

Generally, "**practical**" relates to usefulness and cost while "**practicable**" requires balancing all the relevant circumstances.

Part of the problem is that the meanings overlap. Often, the "practical" way of doing something is the same as the practicable way. In other words, often the cheapest and most useful (to the licensee) way of doing something is also acceptable even taking into consideration all the relevant factors (which in the case of FRPA includes meeting government's objectives).

However, they are not always the same because the "practicable test" requires that all relevant circumstances be considered – not just usefulness and cost – although those are themselves two of the relevant factors to be considered when using the "practicable" test.

A person who has to determine whether something is the only practicable way of proceeding has to determine whether that is the only feasible way of proceeding bearing in mind all the relevant circumstances. For meeting the test of practicable under FRPA, the kind of circumstances that are relevant may be determined by looking at government's values as expressed by the objectives.

- The DDM's challenge is to balance competing values and determine whether an action was practicable.
- The C&E program's challenge is to ensure the DDM has all the necessary information to make that determination. That means, for the C&E program, that the assessment of whether or not something was practicable through the investigation of potential alternatives, and the presentation of those alternatives

to a DDM, is very much a function of an investigation into any non-compliance of legislation that uses this term.

- In other words, where the term practicable exists in the legislation, whether or not something was practicable is an essential element of any non-compliance. So for any non-compliance to have occurred, it must be shown on the balance of probabilities that there was practicable alternative.

Example 1: Forest Planning and Practises Regulation

Restrictions in a riparian management area: FPPR s. 50 (1)
Unless exempted under section 13 (b) [when result or strategy not required], a person must not construct a road in a riparian management area, unless one of the following applies:

a) locating the road outside the riparian management area would create a higher risk of sediment delivery to the stream, wetland or lake to which the riparian management area applies;

*b) there is no other **practicable** option for locating the road;*

c) the road is required as part of a stream crossing.

The question to be answered in this example is does a "practicable" option exist. If yes, a road must be built outside of the riparian management area unless it falls under 51 (1)(a) or 51 (1)(c). To determine if the answer is yes, the DDM would consider the issues and concerns brought to his/her attention and then balance the competing values of cost, usefulness of other locations, and government's fisheries and soils objectives.

The role of the C&E Technician in these circumstances is to bring forward the issues and concerns to the DDM. That may require an expert opinion such as an engineer specialising in road layout and design. The engineer could provide the C&E tech and or DDM with a professional opinion on whether or not there was another "practicable" option. If there was no other practicable option, the engineer's report would be placed on the inspection file. This is not to say an engineer's report will be necessary in all cases. In many circumstances the options for the road will be limited.

The C&E tech could also ask the licensee to provide them with the rationale for placing the road in the RMA. The C&E tech would then critically examine the studies, reports, and options presented to the Licensee by the road layout crew or professional, as the case may be. It may be that the C&E tech would elect not to bring the matter forward, because in the tech's view, there is no other practicable option. When in doubt, the tech should gather together as much information as possible, consult with colleagues and experts and then determine whether or not to present the information to the DDM.

Example 2: Forest Planning and Practises Regulation

Restrictions in a riparian management area: FPPR s. 50 (3)
Unless exempted under section 91 (1), a person who is authorized in respect of a road must not remove gravel or other fill from within a riparian management area in the process of constructing, maintaining or deactivating a road, unless

a) the gravel or fill is within a road prism,

b) the gravel or fill is at a stream crossing, or

*c) there is no other **practicable** option.*

Substitute the word practical for practicable. In those circumstances, you would be considering only usefulness and cost. The question would be: W*hat is the cheapest and most efficient way of obtaining gravel for the road*?

However, the legislation says "practicable". This means the option must consider matters other than usefulness and cost. The question then becomes when balancing government's objectives with respect to fisheries, water and soil as well as cost and usefulness [and any other relevant considerations such as safety], is there any other options for gravelling the road, or is this the only practicable option.

Again, you may wish to ask the Licensee to tell you what other options it considered. You ask yourself, what was the impact of the gravel pit in the RMA? You may wish to consult an expert on this, such as a WLAP specialist. Are there other sources of gravel that are "practicable?" Did the Licensee assess the risk of using this location as a gravel source?

In essence, government by this type of legislation is saying that we [the people of British Columbia] are willing to accept some risk to fish habitat by allowing industry to build quarries in RMAs where there is no practicable alternative. We are not willing to accept the risk of allowing quarries solely where there is no practical alternative. However, even where we accept the risk of a quarry where there is no practicable alternative, industry retains responsibility for any detrimental results that might arise from the risk.

Under the Code, industry would require an exemption or amendment, which essentially put government on the hook for the risk. Now, government has chosen to rely on professional accountability that flows into industry accountability. Industry earns a benefit [less process which equals less cost] but it also undertakes the risk.

As well, it is worth considering the premise of the legislation (FRPA) as a whole. The intent is to preserve environmental standards while making industry responsible for outcomes. While the question of whether or not something was practicable is arguable across a broad spectrum of circumstances, the larger question may be, what was the result. Again, if in doubt, an expert may sometimes best assess the question of result. As well, the result may be dynamic.

The gravel pit may be the only practicable option. And for the first season or two, the gravel pit may not have any impact, however, for a variety of reasons over time, the integrity of the pit may decline. It could fill up with water and leech into a fish stream. If that occurred, the question of whether or not the quarry was practicable becomes irrelevant. Industry is responsible for the result, and in these circumstances the Licensee may be non-compliant with section 57 of the *Forest Planning and Practises Regulation*.

> ***Protection of fish and fish habitat: FFPR s. 57***
> *Unless exempted under section 91 (1) [minister may grant exemptions], an authorized person who carries out a primary forest activity must conduct the primary forest activity at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.*

If the pit was leeching into a fish stream, and subject to the leeching being harmful to fish, the question of whether or not the quarry was practicable becomes irrelevant. It may have been practicable. However, industry took the risk and industry retains responsibility for the result, which in these circumstances may be contrary to the legislation.

C&E Program Staff Bulletin 09 August 19, 2004

ERA BILLING / INVOICING

Purpose

The purpose of this bulletin is to describe the process for billing/invoicing by the district where the ERA file was generated.

Introduction

The enactment of FRPA has altered the review and appeal procedures, which has removed the necessity for Review Officials at the Region. It was these Review Officials who were previously responsible for billing/invoicing based upon determinations of non-compliance with the Code.

Due to this change, CELT discussed the workload implications and most efficient means of generating invoices. There is an inherent logic to have the responsibility lie in the district that generates the activity. CELT piloted the option and Bill Myers, the C&E FOS in Skeena Stikine graciously agreed to test the concept. Based upon Bill's trial, which Bill described as "this is too simple… I find this to be an extremely simple, easy, foolproof process…" CELT has made the decision that invoicing will now be the prime responsibility of the district.

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C&E Program Staff Bulletin 10 August 27, 2004

ROLES AND RESPONSIBILITIES OF SPECIAL PROVINCIAL CONSTABLES

Purpose

The purpose of this Bulletin is to advise Ministry of Forests staff of the authorities and Roles and Responsibilities of Special Provincial Constables within the Ministry of Forests.

Background

Section 9 of the Police Act reads:

> ***Special Provincial Constables: Police Act s. 9***
> *1) The minister may appoint persons the minister considers suitable as special provincial constables.*
> *2) A special provincial constable appointed under subsection (1) is appointed for the term the minister specifies in the appointment.*
> *3) Subject to the restrictions specified in the appointment and the regulations, a special provincial constable has the powers, duties and immunities of a provincial constable.*

Our Deputy Minister approved the Special Provincial Constable initiative in early 2004. It is a two year pilot project. As the Regional C&E Special Investigations Units [SIU] staff are a cohesive, relatively small group within the C&E program, it was decided to move forward with these people as the test group.

Prior to being appointed to act as SPCs, the program as a whole had to be approved by the *Ministry of Public Safety and the Solicitor General* (MPSSG), the Ministry responsible for the *Police Act*. That process took several months and included a detailed examination of our legislative responsibilities, our mandate, and our training regime. The result was an MOU between the MPSSG and the Ministry. Once that MOU was agreed to, the second process was initiated.

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Knowledge and Competencies Required of SPCs within the Ministry

All SPC applicants within the Ministry require knowledge and competencies in the following areas:

1) Administrative law;
2) Criminal law;
3) Canadian Charter of Rights and Freedoms;
4) Canadian Justice System;
5) Provincial Acts and Regulations as specified within the SPC Appointment;
6) Investigation and enforcement skills;
7) Evidence collection, preservation and documentation;

8) Investigative interviewing;
9) Scene documentation;
10) Investigative report writing;
11) Intelligence collection and analysis;
12) Search warrant application and execution;
13) Major case management;
14) Emergency vehicle operations;
15) Surveillance (static and mobile) practices and procedures;
16) Giving evidence in court.

Authorities of a SPC within the Ministry of Forests

Section 10 of the Police Act reads as follows:

Jurisdiction of Police Constables: Police Act s. 10

1) Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has, while carrying out the duties of his or her appointment, jurisdiction throughout British Columbia to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under an enactment.

2) If a provincial constable, auxiliary constable, designated constable or special provincial constable exercises jurisdiction under subsection (1) in a municipality having a municipal police department, he or she must, if possible, notify the municipal police department in advance, but in any case must promptly after exercising jurisdiction notify the municipal police department of the municipality.

The guiding document for the authorities of SPCs within the Ministry is Ministry of Forests Policy 16.33 Special Provincial Constables.

SPCs have the authority to:

1) Execute Criminal Code search warrants in order to gather evidence for prosecutions.
   - May only do so once they have received appropriate training.
   - May only do so relevant to investigations of offences under our legislation.
2) Conduct surveillance operations.
   - May do so pursuant to Section 122 of the Motor Vehicle Act [MVA].
   - See following section.
3) Operate emergency vehicles pursuant to Section 122 of the MVA.
   - Despite this authority, by policy, SPCs may not undertake any pursuit of a motor vehicle.

- May only operate an emergency vehicle after they have received training in the BC Provincial Emergency Vehicle Operators Course.

Definitions in the MVA:
"**emergency vehicle**" means any of the following:

(c) a motor vehicle, or cycle as defined in Part 3, driven by a peace officer, constable or member of the police branch of Her Majesty's Armed Forces in the discharge of his or her duty;

"**peace officer**" means a constable or a person who has a constable's powers;

Section 122 of the MVA reads as follows:

Exemption for emergency vehicles: MVA s. 122

1) Despite anything in this Part, but subject to subsections (2) and (4), a driver of an emergency vehicle may do the following:
- *a) exceed the speed limit;*
- *b) proceed past a red traffic control signal or stop sign without stopping;*
- *c) disregard rules and traffic control devices governing direction of movement or turning in specified directions;*
- *d) stop or stand.*

2) The driver of an emergency vehicle must not exercise the privileges granted by subsection (1) except in accordance with the regulations.

3) [Repealed 1997-30-2.]

4) The driver of an emergency vehicle exercising a privilege granted by subsection (1) must drive with due regard for safety, having regard to all the circumstances of the case, including the following:
- *a) the nature, condition and use of the highway;*
- *b) the amount of traffic that is on, or might reasonably be expected to be on, the highway;*
- *c) the nature of the use being made of the emergency vehicle at the time.*

Therefore, in the course of their duties, after they have received the required training, a SPC may operate a vehicle in the above manner.

4) A SPC may seize evidence during the course of an investigation into an offence pursuant to our forestry legislation.

5) A SPC may detain a person to require that person to produce identification.
- May not do so until they have received training in the Canadian Use of Force Continuum.
- May not use force for the purposes of obtaining lawful identity.
- May not carry or use an force options, such as batons or handcuffs, other than [pepper] sprays as a safety device against animals.

6) Despite section 494, Part XVI of the Criminal Code [Canada], SPCs, by policy, may not arrest any person during the course of their duties.

SPC Responsibilities within the Ministry of Forests

It is the responsibility of each SPC:

1) To be fully knowledgeable and aware of their duties and responsibilities.
2) To be fully knowledgeable and aware of Policy 16.33.
3) To be fully knowledgeable of the MOU between the Ministry and the MPSSG.
4) To be fully knowledgeable of the Police Act sections and Regulations that apply to SPC status.
5) To apply for and attend the requisite training prior to exercising the specified authorities.
6) To record each incident or exercise of authority as a SPC.
7) To exercise their authorities in an exemplary and responsible manner.
8) Must not represent themselves to the public that they are officers or have powers beyond that of their legislated mandate or SPC appointment.

It is the responsibility of the SPC supervisor, the RCEM to:

1) Respond to any complaints against a SPC.
2) To inform the Provincial Co-ordinator, Investigations and Enforcement of any complaint against an SPC.
3) To be fully knowledgeable of the Police Act sections and Regulations that apply to SPC status.
4) To establish a tracking system to be utilised by the Regional SPC for the purpose of recording each incident of the exercise of SPC authority.
5) To support SPC training needs.
6) To inform the local police and RCMP detachments within their region of the names of those persons with SPC status.
7) To notify C&E Branch of any incident which may affect the SPCs ability to continue to hold SPC authority.

It is the responsibility of the Ministry [C&E Branch to co-ordinate], to:

1) Maintain, update and amend the MOU as necessary or recommended.
2) Advise the MPSSG of any proposed changes to the job descriptions of MPSSG approved SPCs.
3) Notify the MPSSG of the names of those persons who supervise the SPCs.
4) Notify the MPSSG of any actual or potential litigation that might arise out the actions of a SPC.

5) Provide the MPSSG with a copy of any complaint, and any subsequent outcome, against a SPC.
6) Develop a policy and procedure for dealing with complaints [MOF Public Complaints Policy].
7) Maintain selection and performance standards for SPC applicants acceptable to the MPSSG.
8) Utilize the Justice Institute to assess all SPC applicants.
9) Provide the MPSSG with the operational policy guiding SPCs within the Ministry.
10) Establish and maintain a liaison with the Forest Crimes Unit of the RCMP.
11) Submit an annual report to the MPSSG.

Staff Designated as SPCs

The following staff have been designated as Special Provincial Constables:

Branch: Jerry Hunter

RCO: Troy Sterling, Rick Hardy, Myles Mana, Dave Steele

RSI: Peter Berukoff, George Buis, Ian Douglas, Neil Fipke, Jim Garbutt, Arlene Gilmore

RNI: Marcel Belanger, David Botten, Jaqueline Hipwell, Whitney Numan

Attachments

This bulletin has 3 attachments:

- *Special Provincial Constable* Oath
- *Special Provincial Constable* Application Form
- *Special Provincial Constable* Memorandum of understanding

C&E Program Staff Bulletin 11 September 2, 2004

GUIDANCE ON DEALING WITH TIMBER CUT, DAMAGED, DESTROYED OR REMOVED WITHOUT AUTHORITY

Purpose

The purpose of this bulletin is to provide guidance on how to deal with recent legislative changes related to stumpage on Crown timber cut, damaged, destroyed or removed without authority

Introduction

Changes to the *Forest Act* that came into effect on November 4th, 2003, require that stumpage be paid on Crown timber cut, damaged, destroyed or removed without authority. Prior to November 4th, 2003, stumpage could not be collected on Crown timber harvested without authority.

Section 103(3) of the *Forest Act* now provides as follows:

> ***Amount of Stumpage: Forest Act s. 103(3)***
> *Despite sections 107 and 108,* ***a person who cuts, damages or destroys Crown timber without authorization must pay****, in addition to all other amounts payable under this Act, the regulations or another enactment,* ***stumpage calculated by multiplying the volume or quantity of the timber that was cut, damaged, destroyed or removed without authorization****, as determined by an official designated by the minister,* ***by the sum of***
>
> *(a) the rate of stumpage that an employee of the ministry referred to in section 105 (1) determines would likely have applied to the timber under that section if rights to the timber had been granted under an agreement entered into under this Act, and*
>
> *(b) if applicable, the bonus bid that an employee of the ministry referred to in section 105 (1) determines would likely have been offered for the timber if rights to the timber had been granted under an agreement entered into under this Act.*
>
> *[emphasis added]*

Prior to this section coming into force, when a Senior Official determined that Crown timber had been harvested without authority, the Crown had an obligation to return any stumpage paid on that timber. The Senior Official could then add an equivalent amount onto the penalty to compensate the Crown. This equivalent amount formed part of the penalty and was not "stumpage" *per se*.

With the introduction of section 103(3), the Ministry will not return stumpage to the person if the timber was harvested without authority on or after November 4, 2003.

This is true regardless of whether the person contravened the *Forest Practices Code of British Columbia Act* (FPC) or the *Forest and Range Practices Act* (FRPA).

Further, if stumpage has *not* been paid on timber cut, damaged, destroyed or removed without authority, then, pursuant to section 103(3), the Ministry must now charge stumpage on that timber instead of adding an equivalent amount onto the penalty. This bulletin attempts to explain section 103(3) and the new procedures contemplated by it.

Section 103(3) refers to both "**an official designated by the minister**" and "**an employee of the ministry referred to in section 105**". It is important to distinguish between these roles. The Minister has designated District Managers and Regional Managers/Regional Executive Directors as officials for the purposes of section 103(3). This means that when making a contravention determination, the official (normally the District Manager) must determine the volume of the timber that was cut, damaged, destroyed or removed without authorization (the "unauthorized harvest"). This section 103(3) volume determination is not stayed under section 78 of FRPA.

An "**employee of the ministry referred to in section 105**" means the revenue person, normally a regional Timber Pricing Forester, who determines stumpage rates under the *Forest Act*. That person must decide the rate of stumpage that would likely have applied to the timber if rights to the timber had been granted. He or she must also determine what the bonus bid would likely have been if rights to the timber had been granted.

The Act does not specify who should do the stumpage calculation, that is, the multiplication of the unauthorized volume by the stumpage rate - the "official" or the "employee". In practice, the Revenue person should calculate the stumpage owing by multiplying the volume of unauthorized harvest by the stumpage rate (and, if applicable, the bonus bid). Stumpage billing or credit, as the case may be, should then be initiated by regional revenue staff.

Section 103(3) of the *Forest Act* sets out the procedure by which stumpage on unauthorized harvest is calculated. Section 105(1) specifies that if stumpage is payable to the government under an agreement entered into under the *Forest Act* or *under section 103(3)*, the rates of stumpage must be determined, redetermined and varied:

(a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c);

(b) at the times specified by the minister; and

(c) in accordance with the policies and procedures approved for the forest region by the minister.

Because the stumpage rate is determined under section 105 of the *Forest Act*, any appeal of that determination is under section 146(2) of the *Forest Act*.

This means that where a DDM makes a contravention determination under section 71 of FRPA, and determines the volume of timber that was cut, damaged, destroyed or removed without authority under section 103(3) of the *Forest Act*, and an employee of the ministry determines stumpage under section 105(1) of the *Forest Act*, three separate determinations will have been made.

An appeal of the DDM's contravention determination will be under section 82 of FRPA, while an appeal of the stumpage determination would proceed under section 146(2) of the *Forest Act*. The determination of the volume of timber that was cut, damaged, destroyed or removed without authority is not appealable.

Where applicable, the person should be advised, in the notice of determination, of the separate appeal processes for the different determinations.

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Upcoming Bulletin

A separate bulletin should be released shortly dealing with section 106 of FRPA, concerning a person's liability to government for timber cut, damaged or destroyed without authority and liability for economic gain that results from what would have been a contravention if it were not for the defence of due diligence, mistake of fact or officially induced error.

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C&E Program Staff Bulletin 12 Revised - June 26, 2006

GUIDANCE TO C&E PROGRAM STAFF ON THE ASSESSMENT OF MEASURABLE OR VERIFIABLE RESULTS OR STRATEGIES WITHIN A FOREST STEWARDSHIP PLAN

Purpose

The purpose of this bulletin is to assist C&E program staff who may be called upon by a DDM to provide advice on whether results or strategies within an FSP are measurable or verifiable. It is not legal advice; it is not binding, and is intended to act as guidance only. You will require a colour printer in order to fully utilize this Bulletin in a printed format.

Legislative Requirements

Section 5(1)(b) of *Forest and Range Practices Act* (FRPA) reads as follows:

> *A forest stewardship plan must*
>
> *(b) specify intended results or strategies, each in relation to*
>
> *(i) objectives set by government, and*
>
> *(ii) other objectives that are established under this Act or the regulations and that pertain to all or part of the area subject to the plan,*

The *Forest Planning and Practices Regulation* (FPPR) in force January 31, 2004, contains the following two definitions:

> *"result" means a description of*
>
> *(a) measurable or verifiable outcomes in respect of a particular established objective, and*
>
> *(b) the situations or circumstances that determine where in a forest development unit the outcomes under paragraph (a) will be applied;*
>
> *"strategy" means a description of*
>
> *(a) measurable or verifiable steps or practices that will be carried out in order to meet a particular established objective, and*
>
> *(b) the situations or circumstances that determine where in a forest development unit the steps or practices will be applied;*
>
> *(emphasis added)*

Therefore, pursuant to the legislation, an FSP **must** contain a description of measurable or verifiable outcomes OR a description of measurable or verifiable steps or practices, **and** a description of the situations or circumstances that determines where they apply.

Assessing Results And Strategies

It is the Delegated Decision Maker's (DDM) role to assess licensees' proposed results and strategies to determine if (a) they fulfil the descriptive requirements, and (b) are consistent with objectives. It is C&E's role to assist the DDM with respect to the (a) part of that determination.

How does government determine whether a result or strategy has met the descriptive requirements?

The Meaning of the Words

Understanding the meaning of the words used in the provisions is an important first step. The following definitions, synthesized from Oxford and Merriam-Webster dictionaries, may be helpful:

Measurable: capable of being measured; susceptible of mensuration or computation.

Measure: dimensions, quantity, or capacity as ascertained by comparison with a standard. A reference standard or sample used for the quantitative comparison of properties: *The standard kilogram is maintained as a measure of mass*. A unit specified by a scale, such as a meter, or by variable conditions, such as a day's march.

Verifiable: capable of being verified or disproved by experiment or observation.

Verify: to determine or test the truth or accuracy of, as by comparison, investigation, or reference; to prove to be true or correct; to establish the truth of; to confirm; to substantiate.

Situation: the way in which something is placed in relation to its surroundings, or a relative position or combination of circumstances at a certain moment.

Circumstance: a condition, fact, or event accompanying, conditioning, or determining another; an essential or inevitable concomitant [*the terrain is a circumstance to be taken into consideration*]; or a subordinate or accessory fact or detail, a piece of evidence that indicates the probability or improbability of an event.

Generally speaking, something is measurable when an outcome can be compared to an empirical set of data in order to determine if the outcome has been achieved. This will usually involve numbers. Something is verifiable where there are either steps in a process and/or an end result that can be proven through examination or demonstrated to have occurred.

The way in which something is placed in relation to its surroundings can describe the situation: for example, within a riparian area or not within a riparian area. A fact, condition, or occurrence affecting an event describes a circumstance: for example, low crown commercial thinning (intermediate cut) versus seedtree silvicultural system.

Another way to view this is that a result or strategy must be quantifiable or demonstrable.

Familiarity with the Practice Requirements

Another valuable tool is to be familiar with the practice requirements set out in the FPPR. Each practice requirement is equivalent to a result or strategy. Under FPPR s. 12.1, a licensee is exempt from providing certain results or strategies if it undertakes to comply with certain practice requirements.

Alternatively, under FPPR s. 12.2 to 12.5 a licensee may specify a result or strategy, and in doing so may adopt a practice requirement as their result or strategy. The practice requirements therefore provide valuable clues as to what the Legislature considers to be enforceable results and strategies. Moreover, those results and strategies are considered to be consistent with objectives.

You will notice that each of the practice requirements contains specific and essential elements. They are:

- Who
- What
- Where
- When

The "why" is usually implicit in the objectives set by government, or contained within documents supplied for information purposes to support the FSP.

With respect to *how* results and strategies will be achieved or carried out, there is no need for an FSP to explain how a *result* will be achieved. A *strategy*, on the other hand, must articulate sufficient steps or practices for the DDM to understand what is being described and to determine whether it is consistent with objectives. The "how" may be described in more detail in a site plan, or through the adoption of a guidance document, or even in a licensee's standard operating procedure.

An example of the application of the 'who, what, where, when' test to a FPPR practice requirement is set out below.

Landslides

37 An authorized person who carries out a primary forest activity must ensure that the primary forest activity does not cause a landslide that has a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act.

(emphasis added)

- Who: "*authorized person*"
- What: "*does not cause a landslide that has a material adverse effect*"
- Where: (location of) "*the primary forest activity*"
- When: "*carries out a primary forest activity*" "*in relation to one or more of the subjects listed in section 149(1) of the Act*"

This practice requirement describes a result that can be verified and enforced.

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APPENDIX 1: – EXAMPLE ANALYSIS BREAKDOWN OF SECTION ELEMENTS

[As they were worded March 18, 2005, with exceptions as noted. Sections below are highlighted for discussion and or training purposes only.]

Who, What, When, Where	Measurable or Verifiable, Situation or Circumstance
35 Soil disturbance limits	**35 Soil disturbance limits**
1) In this section:	1) In this section:
"roadside work area" means the area adjacent to a road where one or both of the following are carried out:	"roadside work area" means the area adjacent to a road where one or both of the following are carried out:
a) decking, processing or loading timber;	a) decking, processing or loading timber;
b) piling or disposing of logging debris;	b) piling or disposing of logging debris;
"sensitive soils" means soils that, because of their slope gradient, texture class, moisture regime, or organic matter content have the following risk of displacement, surface erosion or compaction:	"sensitive soils" means soils that, because of their slope gradient, texture class, moisture regime, or organic matter content have the following risk of displacement, surface erosion or compaction:
a) for the Interior, a very high hazard;	a) for the Interior, a very high hazard;
b) for the Coast, a high or very high hazard.	b) for the Coast, a high or very high hazard.
2) Repealed [B.C. Reg. 580/04]	2) Repealed [B.C. Reg. 580/04]
3) An agreement holder other than a holder of a minor tenure who is carrying out timber harvesting must not cause the amount of soil disturbance on the net area to be reforested to exceed the following limits:	3) An agreement holder other than a holder of a minor tenure who is carrying out timber harvesting must not cause the amount of soil disturbance on the net area to be reforested to exceed the following limits:
a) if the standards unit is predominantly comprised of sensitive soils, 5% of the area covered by the standards unit, excluding any area covered by a roadside work area;	a) if the standards unit is predominantly comprised of sensitive soils, 5% of the area covered by the standards unit, excluding any area covered by a roadside work area;
b) if the standards unit not is not predominantly comprised of sensitive soils, 10% of the area covered by the standards unit, excluding any area covered by a roadside work area;	b) if the standards unit not is not predominantly comprised of sensitive soils, 10% of the area covered by the standards unit, excluding any area covered by a roadside work area;

Who, What, When, Where	Measurable or Verifiable, Situation or Circumstance
c) 25% of the area covered by a roadside work area.	c) 25% of the area covered by a roadside work area.
4) An agreement holder may cause soil disturbance that exceeds the limits specified in subsection (3) if the holder	4) An agreement holder may cause soil disturbance that exceeds the limits specified in subsection (3) if the holder
a) is removing infected stumps or salvaging windthrow and the additional disturbance is the minimum necessary, or	a) is removing infected stumps or salvaging windthrow and the additional disturbance is the minimum necessary, or
b) is constructing a temporary access structure and both of the following apply:	b) is constructing a temporary access structure and both of the following apply:
i) the limit set out in subsection (3) (a) or (b), as applicable, is not exceeded by more than 5% of the area covered by the standards unit, excluding the area covered by a roadside work area;	i) the limit set out in subsection (3) (a) or (b), as applicable, is not exceeded by more than 5% of the area covered by the standards unit, excluding the area covered by a roadside work area;
ii) before the regeneration date, a sufficient amount of the area within the standards unit is rehabilitated such that the agreement holder is in compliance with the limits set out in subsection (3).	ii) before the regeneration date, a sufficient amount of the area within the standards unit is rehabilitated such that the agreement holder is in compliance with the limits set out in subsection (3).
5) The minister may require an agreement holder to rehabilitate an area of compacted soil if all of the following apply:	5) The minister may require an agreement holder to rehabilitate an area of compacted soil if all of the following apply:
a) the area of compacted soil	a) the area of compacted soil
i) was created by activities of the holder,	i) was created by activities of the holder,
ii) is within the net area to be reforested, and	ii) is within the net area to be reforested, and
iii) is a minimum of 1 ha in size;	iii) is a minimum of 1 ha in size;
b) the holder has not exceeded the limits described in subsection (3);	b) the holder has not exceeded the limits described in subsection (3);
c) rehabilitation would, in the opinion of the minister,	c) rehabilitation would, in the opinion of the minister,
i) materially improve the productivity and the hydrologic function of the soil within the area, and	i) materially improve the productivity and the hydrologic function of the soil within the area, and
ii) not create an unacceptable risk of further damage or harm to, or impairment of, forest resource values related to one or more of the subjects listed in	ii) not create an unacceptable risk of further damage or harm to, or impairment of, forest resource values related to one or more of the subjects listed in

Who, What, When, Where	Measurable or Verifiable, Situation or Circumstance
section 149 (1) of the Act. 6) An agreement holder who rehabilitates an area under subsection (4) or (5) must a) remove or redistribute woody materials that are exposed on the surface of the area and are concentrating subsurface moisture, to the extent necessary to limit the concentration of subsurface moisture on the area, b) de-compact compacted soils, and c) return displaced surface soils, retrievable side-cast and berm materials. 7) If an agreement holder rehabilitates an area under subsection (4) or (5) and erosion of exposed soil from the area would cause sediment to enter a stream, wetland or lake, or a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act, the agreement holder, unless placing debris or revegetation would not materially reduce the likelihood of erosion, must a) place woody debris on the exposed soils, or b) revegetate the exposed mineral soils.	section 149 (1) of the Act. 6) An agreement holder who rehabilitates an area under subsection (4) or (5) must a) remove or redistribute woody materials that are exposed on the surface of the area and are concentrating subsurface moisture, to the extent necessary to limit the concentration of subsurface moisture on the area, b) de-compact compacted soils, and c) return displaced surface soils, retrievable side-cast and berm materials. 7) If an agreement holder rehabilitates an area under subsection (4) or (5) and erosion of exposed soil from the area would cause sediment to enter a stream, wetland or lake, or a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act, the agreement holder, unless placing debris or revegetation would not materially reduce the likelihood of erosion, must a) place woody debris on the exposed soils, or b) revegetate the exposed mineral soils.
Who, What, When, Where	**Measurable or Verifiable, Situation or Circumstance**
37 Landslides An authorized person who carries out a primary forest activity must ensure that the primary forest activity does not cause a landslide that has a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act.	**37 Landslides** An authorized person who carries out a primary forest activity must ensure that the primary forest activity does not cause a landslide that has a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act.
Who, What, When, Where	**Measurable or Verifiable, Situation or Circumstance**
57 Protection of Fish and Fish Habitat An authorized person who carries out a primary forest activity must conduct the primary forest activity at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.	**57 Protection of Fish and Fish Habitat** An authorized person who carries out a primary forest activity must conduct the primary forest activity at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.

Who, What, When, Where	Measurable or Verifiable, Situation or Circumstance
64 Maximum Cutblock Size 1) If an agreement holder other than a holder of a minor tenure harvests timber in a cutblock, the holder must ensure that the size of the net area to be reforested for the cutblock does not exceed a) 40 hectares, for the areas described in the Forest Regions and Districts Regulation that are listed in Column 1, and b) 60 hectares, for the areas described in the Forest Regions and Districts Regulation that are listed in Column 2: [Note: Table as per regulation is not reproduced here for brevity purposes] 2) Subsection (1) does not apply to an agreement holder where a) timber harvesting i) is being carried out on the cutblock A) to recover timber damaged by fire, insect infestation, wind or other similar events, or B) for sanitation treatments, or ii) is designed to be consistent with the structural characteristics and the temporal and spatial distribution of an opening that would result from a natural disturbance, and b) the holder ensures, to the extent practicable, that the structural characteristics of the cutblock after timber harvesting has been substantially completed resemble an opening that would result from a natural disturbance. 3) Subsection (1) does not apply if the timber harvesting that is being carried out on the cutblock retains 40% or more of basal area of the stand that was on the cutblock before timber harvesting.	**64 Maximum Cutblock Size** 1) If an agreement holder other than a holder of a minor tenure harvests timber in a cutblock, the holder must ensure that the size of the net area to be reforested for the cutblock does not exceed a) 40 hectares, for the areas described in the Forest Regions and Districts Regulation that are listed in Column 1, and b) 60 hectares, for the areas described in the Forest Regions and Districts Regulation that are listed in Column 2: [Note: Table as per regulation is not reproduced here for brevity purposes] 2) Subsection (1) does not apply to an agreement holder where a) timber harvesting i) is being carried out on the cutblock A) to recover timber damaged by fire, insect infestation, wind or other similar events, or B) for sanitation treatments, or ii) is designed to be consistent with the structural characteristics and the temporal and spatial distribution of an opening that would result from a natural disturbance, and b) the holder ensures, to the extent practicable, that the structural characteristics of the cutblock after timber harvesting has been substantially completed resemble an opening that would result from a natural disturbance. 3) Subsection (1) does not apply if the timber harvesting that is being carried out on the cutblock retains 40% or more of basal area of the stand that was on the cutblock before timber harvesting.

Who, What, When, Where	Measurable or Verifiable, Situation or Circumstance
4) Subsection (1) does not apply if no point within the net area to be reforested is a) more than two tree lengths from either i) the cutblock boundary, or ii) a group of trees reserved from harvesting that is greater than or equal to 0.25 ha in size, or b) more than one tree length from a group of trees reserved from timber harvesting that is less than 0.25 ha in size.	4) Subsection (1) does not apply if no point within the net area to be reforested is a) more than two tree lengths from either i) the cutblock boundary, or ii) a group of trees reserved from harvesting that is greater than or equal to 0.25 ha in size, or b) more than one tree length from a group of trees reserved from timber harvesting that is less than 0.25 ha in size.
Who, What, When, Where	**Measurable or Verifiable, Situation or Circumstance**
68 Coarse Woody Debris 1) An agreement holder who carries out timber harvesting must retain at least the following logs on a cutblock: a) if the area is on the Coast, a minimum of 4 logs per hectare, each being a minimum of 5 m in length and 30 cm in diameter at one end; b) if the area is in the Interior, a minimum of 4 logs per hectare, each being a minimum of 2 m in length and 7.5 cm in diameter at one end. 2) An agreement holder is exempt from subsection (1) if a) the holder's agreement or an enactment requires the holder to act in a manner contrary to that set out in subsection (1), or b) the holder carries out on the cutblock a controlled burn that is authorized under an enactment.	**68 Coarse Woody Debris** 1) An agreement holder who carries out timber harvesting must retain at least the following logs on a cutblock: a) if the area is on the Coast, a minimum of 4 logs per hectare, each being a minimum of 5 m in length and 30 cm in diameter at one end; b) if the area is in the Interior, a minimum of 4 logs per hectare, each being a minimum of 2 m in length and 7.5 cm in diameter at one end. 2) An agreement holder is exempt from subsection (1) if a) the holder's agreement or an enactment requires the holder to act in a manner contrary to that set out in subsection (1), or b) the holder carries out on the cutblock a controlled burn that is authorized under an enactment.

C&E Program Staff Bulletin 13 November 26, 2004

FRPA/Forest Practices Code Transition

Purpose

The purpose of this bulletin is to answer questions and provide guidance to C&E program staff about issues that can arise from the transition from the *Forest Practices Code of British Columbia Act* (the Code) to the *Forest and Range Practices Act* (FRPA).

1 After January 31st, 2004 will my enforcement actions (SWOs, tickets, admin penalties, prosecution) be taken under FRPA or will I still use the Code?

You will be exercising your authority as an official under FRPA; **not** under the Code. Section 59 of FRPA defines "the Acts" as including the *Forest Act*, *Range Act*, the Code and FRPA and all their regulations for the purpose of Part 6 of FRPA (Compliance & Enforcement). All of the other sections in Part 6 talk about "the Acts", so you have the authority to enforce "the Acts".

1.1 How does this impact C&E staff?

We can now issue a Stop Work Order for a contravention of the *Forest Act* and *Range Act* - we couldn't do that before. The government can also levy monetary penalties for the *Forest Act*, which we couldn't do before. Finally, because the limitation period for prosecution of an offence of "the Acts" is 3 years from discovery, we now have a much longer time to lay charges for *Forest Act* offences. And now, this 3-year limitation period is consistent.

1.2 What about my authorities as a forest official? Have these been changed or impacted by FRPA?

No. With FRPA coming into force, we are having all C&E staff designated as officials under that legislation. However, the *Interpretation Act* did provide for our designations under the Code to be interpreted as a designation under FRPA as well. Section 36(1)(a) of the *Interpretation Act* states that:

> *36(1) If an enactment (the "former enactment") is repealed and another enactment (the "new enactment") is substituted for it,*
>
> *(a) every person acting under the former enactment must continue to act as if appointed or elected under the new enactment until another is appointed or elected in his or her place,*

So our designations as officials under the Code would be construed as designations as officials for the purpose of FRPA as well.

1.3 So just what am I authorized to do once I am designated as an official under FRPA?

Under FRPA, as a designated official, you have the authority to:

s. 59 (2)	**enter land or premises for administration or enforcement**
s. 59 (3)	**enter land to inspect for fire hazards**
s. 59 (4)	**inspect and copy plans and records**
s. 60	**stop and inspect vehicles or vessels**
s. 61 (2)	**enter business premises and inspect and copy records**
s. 63 (2)	**require production of identification, licence, plan or record**
s. 64	**Obtain a warrant to search and seize**
s. 65	**be accompanied by a peace officer**
s. 66 (1)	**issue a stop work order**
s. 66 (6)	**rescind a stop work order**
s. 67 (1)	**seize chattels, hay, etc.**
s. 67 (2)	**release things seized**
s. 68 (1)	**forfeiture of livestock**
s. 68 (2)	**seize livestock**
s. 115	**exercise powers separately, concurrently or cumulatively**

2 Will new tenures that are not subject to current FDP's such as Forestry Licence to Cuts be totally under the FRPA regime?

Yes. Section 203 of FRPA deals with Licenses to Cut, and states that if the LTC was entered into prior to this January 31st 2004, the Code rules apply; if the LTC is entered into on or after January 31st, 2004 then all of FRPA and its regs apply. Section 204 of FRPA deals with Master Licenses to Cut that have Cutting Permits issued under them, and says that CPs issued under a MLTC prior to January 31st, 2004 go by Code rules, whereas those issued on or after this January 31st, 2004 will be subject to FRPA rules.

3 For current tenure holders, will the requirement to give notice to commence work be under Code or FRPA?

Sections 191 through 197 of FRPA tell you which legislation applies. If harvesting on a cutblock or road construction/modification has commenced prior to January 31st, 2004, then the requirements of the Code would apply. Therefore, the requirement to give notice of harvesting would lie in s. 58(2) of the THSPR; and the requirement for notice of road activities would lie in s. 20(2) of the Forest Road Reg.

If harvesting or road construction/modification commences on or after January 31st, 2004, but it does so under an existing Forest Development Plan, then it

would also be subject to the Code rules. So again the notification requirement would be under the Code's THSPR and Forest Road Regulation, as above.

Once Forest Stewardship Plans (FSP) are in place, any Cutting Permits or Road Permits issued on an area subject to that FSP would be subject to FRPA and its regulations . However, any Cutting Permits or Road Permits that were issued prior to the FSP being approved would continue to be subject to the Code rules.

4 What about senior officials?

Regional Managers & District Managers do not continue to be "senior officials" with the coming into force of FRPA. The term "senior official" does not exist in the FRPA world. In FRPA "**minister**" includes the minister's delegate; and the minister replaces senior officials. Senior ministry staff have been delegated specific authorities from the Minister. This matrix of delegations is available on the C&E Intranet site under the *Legs and Regs* tab.

5 Are there any changes with respect to charging stumpage on unauthorized harvests?

Yes. Amendments to the *Forest Act* effective November 4, 2003 changed things with respect to stumpage on unauthorized harvesting.

You may recall that previously s. 105 of the *Forest Act* only allowed the government to collect stumpage on timber harvested under an authority; so if a senior official determined timber was harvested without authority, the government was obligated to return any stumpage collected on the timber in question. On November 4th, 2003, *Forest Act* section 103(3) was introduced and section 105(1) was repealed and replaced with wording that allowed government to collect stumpage on timber harvested without authority.

So, a senior official/delegated decision maker should consider any stumpage already collected on timber harvested without authority as all or part of the compensation to the Crown. This amendment should make the determination process easier for all decision makers dealing with unauthorized harvesting.

The *CEPS Bulletin 11: Guidance on dealing with Timber Cut, damaged, Destroyed or Removed without Authority* deals with this subject in detail and is available on the C&E Intranet site under C&E Bulletins.

6 What about the authority to issue Violation Tickets? Has that been changed by FRPA?

You have the authority to issue tickets. Bill 33 - the *Forest Statutes Amendment Act, 2004* received Royal Assent on May 13th, 2004. Section 117 of Bill 33 introduces s. 177.1 to FRPA, which brings offences against the Code back to life.

Pages 57 through 58 redacted for the following reasons:
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C&E Program Staff Bulletin 14 December 17, 2004

RESPONDING TO REQUESTS FOR INFORMATION CONCERNING AN INVESTIGATION

Purpose

The purpose of this bulletin is to provide guidance to C&E program staff and Managers when they receive requests for information about active, incomplete, ongoing, or completed investigations from members of the public, the media, or any other person that may or may not be a party to the investigation.

Introduction

Requests from the subject of an investigation, legal counsel or from a person representing or acting as an agent for the subject of an investigation.

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Legislation

Section 109 (1) of FRPA reads as follows:

109 (1) In this section:
"information" includes a record;
"person" means

a the government, board, commission or council, if any,

b) an employee, agent and independent contractor of the government, board, commission or council, if any, or

c) a member of the board, commission or council, if any.

You are an employee of the government.

Section 109 (3) of FRPA reads as follows:

109 (3) A person must not disclose any information obtained in the exercise of a power or the performance of a duty or function under this Act, the regulations or the standards except

a) as required for the performance of his or her duties under this Act or the regulations, or

b) as permitted in this section or under the Freedom of Information and Protection of Privacy Act or the regulations under that Act.

Accordingly, if you [an employee of government] were to disclose information obtained during the course of an investigation to someone other than a colleague or a party to the investigation you may be in non-compliance with FRPA.

Section 2 (1) of the Freedom of Information and Protection of Privacy Act (FIPPA) reads as follows:

2 (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

a) giving the public a right of access to records,

b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,

c) specifying limited exceptions to the rights of access,

d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and

e) providing for an independent review of decisions made under this Act.

So, this piece of legislation is intended both to ensure privacy and to provide access to personal information.

Section 3 (1) of FIPPA reads as follows:

3 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

[edited for brevity]

h) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;

So section 3 of FIPPA applies to the *Forest and Range Practices Act*, the *Wildfire Act*, the *Forest Act*, the *Range Act*, the *Forest Practices Code of British Columbia Act* and their Regulations and accordingly any records of information relevant to an incomplete prosecution are not available under FIPPA.

Section 15 (1) of FIPPA reads as follows:

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

a) harm a law enforcement matter,

b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism,

c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

d) reveal the identity of a confidential source of law enforcement information,

[edited for brevity]

h) deprive a person of the right to a fair trial or impartial adjudication,

i) reveal a record that has been confiscated from a person by a peace officer in accordance with an enactment,

"law enforcement" means

a) policing, including criminal intelligence operations,

b) investigations that lead or could lead to a penalty or sanction being imposed, or

c) proceedings that lead or could lead to a penalty or sanction being imposed;

So, section 15 (1) (a) of FIPPA provides the discretion for the head of a public body not to disclose information if it can reasonably be expected to harm an investigation or proceedings that lead or could lead to a penalty or sanction. This applies to *Forest and Range Practices Act*, *Wildfire Act*, *Forest Act*, *Range Act*, and *Forest Practices Code of British Columbia Act* investigations.

Section 22 (3)(b) of FIPPA reads as follows:

> *22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,*

So, disclosure of 3rd party information is provided for in the legislation if it is necessary to continue an investigation.

Section 22 (4)(a) of FIPPA reads as follows:

> *22 (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> *a) the third party has, in writing, consented to or requested the disclosure,*

Accordingly, a person can consent in writing to allow disclosure of personal information.

Synopsis

Information relevant to an investigation may not be released if it is harmful to an investigation, and we cannot release any information about a person to any other party unless that person has signed an agreement providing for the release of information.

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Pages 64 through 65 redacted for the following reasons:
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C&E Program Staff Bulletin 15 December 22, 2004

GUIDANCE TO C&E PROGRAM STAFF ON CODE AND FRPA NOTIFICATION REQUIREMENTS TO GOVERNMENT

Purpose

This Bulletin is intended to provide guidance on the compliance and enforcement of notification obligations to Government. The legislation contains other notification obligations. This bulletin does not speak to those other notification obligations.

The Legislation

The Forest Planning and Practices Regulation [FRPA]

Notification of Timber Harvesting and Road Construction.

85 (1) An agreement holder must notify the district manager before

(a) beginning (i) timber harvesting in a cutblock that comprises more than one hectare, or (ii) construction of a road that is a permanent access structure, and

(b) re-starting the activities described in paragraph (a) (i) and (ii) in a cutblock that comprises more than one hectare after an inactive period of 3 months or more.

2) A notice under subsection (1) must specify

(a) the location of the timber harvesting or road, including any administrative identifier that relates to the location,

(b) a contact name and contact information, and

(c) the projected date for beginning timber harvesting or road construction.

The Timber Harvesting and Silviculture Practices Regulation [Code]

Notice required for Timber Harvesting.

58 (1) In this section, "commencement" means initial commencement or recommencement after an inactive period of 3 months or more

2) A holder of an agreement under the Forest Act must notify the district manager, in accordance with subsection (3), before commencement of timber harvesting in a cutblock.

3) A notice under subsection (2) must specify

a) the location of the cutblock,

b) the holder of the agreement under the Forest Act,

c) the name of the holder's representative who is responsible for conducting the timber harvesting, and

d) the projected date for commencement

4) The district manager may exempt a holder of an agreement under the Forest Act, conditionally or unconditionally, from the requirements of subsection (2)

5) A holder of an agreement under the Forest Act who is exempted under subsection (4) must comply with any of the conditions specified in the exemption

Section 20 of the Forest Road Regulation [Code]

Notice required for construction and modification

20 (1) In this section, "commencement" means initial commencement or recommencement after an inactive period of 3 months or more.

2) A holder of an agreement under the Forest Act must notify the district manager, in accordance with subsection (3), before commencement of road construction or modification to relocate a road.

3) A notice under subsection (2) must specify: (a) the location, including any administrative identifier that pertains to the location; (b) the holder of the agreement under the Forest Act; (c) the name of the holder's representative who is responsible for conducting the road construction or modification.

4) The district manager may exempt a holder of an agreement under the Forest Act, conditionally or unconditionally, from the requirements of subsection (2).

5) A holder of an agreement under the Forest Act who is exempted under subsection (4) must comply with any conditions specified in the exemption.

When do I apply the FRPA/FPPR as opposed to the Code [THSPR/FRR] notification requirements?

(a) When an agreement holder is operating under the authority of a TSL, CP or Road Permit issued on an area under a Forest Stewardship Plan rather than a Forest Development Plan.

(b) When the holder is operating under a CP issued after January 31st, 2004 under the authority of a Licence to Cut.

(c) When the holder is operating under the authority of a Licence to Cut that does not provide for CPs and the Licence to Cut was issued after January 31st, 2004.

(d) When the holder is operating under a Master Licence to Cut issued after January 31st, 2004 other than one issued for Oil and Gas purposes. The Code applies to Oil and Gas Licences to Cut.

When do I apply the THSPR or the FRR notification requirements as opposed to the FRPA/FPPR requirements?

(a) When a FA agreement holder is operating on an area under an approved Forest Development Plan.

(b) When the holder is operating under the authority of a CP or RP issued before January 31st, 2004 under a Licence to Cut that provides for CPs and RPs.

(c) When the holder is operating under a LC issued for Oil and Gas purposes.

What about BCTS? Does it have notification requirements?

(a) The THSPR, the FRR and the FPPR all refer to an "agreement holder". BCTS is not an agreement holder, and accordingly BCTS is not obligated to notify the District Manager.

However a TSL, or a Forestry Licence to Cut, or a Road Permit issued by a Timber Sales Manager [FA section 12 (2)] is an agreement under the *Forest Act*, and therefore the holder of any one of these agreements is obligated to provide notification the same as any other agreement holder.

What about Woodlot Licensees? Don't they have their own regulations?

(a) Yes. Both of the Woodlot Regulations under FRPA and the Code have sections that state that the FPPR , the FRR and the THSPR do not apply to Woodlot Licences. Accordingly, none of the FPPR or THSPR or FRR notification requirements apply to Woodlots.

So what notification requirements are there for Woodlots?

(a) Where a Woodlot Licensee is operating in an area under a Woodlot Licence Plan [as opposed to a Forest Development Plan] section 74 (1) of the Woodlot Licence Planning and Practices Regulation will apply:

Woodlot Licence Planning and Practices Regulation [WLPPR]

Notification of Timber Harvesting and Road Construction

74 (1) A woodlot licence holder must notify the district manager before

- *a) beginning*
  - *i) timber harvesting in a cutblock that comprises more than one hectare, or*
  - *ii) construction of a road that is a permanent access structure, and*
- *b) re-starting the activities described in paragraph (a) (i) and (ii) in a cutblock that comprises more than one hectare after an inactive period of 3 months or more.*

2) A notice under subsection (1) must specify

- *a) the location of the timber harvesting or road, including any administrative identifier that relates to the location,*
- *b) a contact name and contact information, and*
- *c) the projected date for beginning timber harvesting or road construction.*

The above WLPPR is the same as the FPPR obligations and accordingly, when operating in an area under a WLP, WL Licensees and other FA agreement holders have the same notification requirements under FRPA despite the fact they operate under different regulations.

My understanding of the Transition sections of FRPA that apply to Woodlots (s. 199, 200, 201] is that most Woodlots are going to continue with their old Forest Development Plans until they expire or are voluntarily replaced by Woodlot Licence Plans. What are the notification requirements for a Woodlot operating in an area under a Forest Development Plan?

For Harvesting

(a) Where a WL Licence holder is operating in an area under a grandfathered FDP the Code applies. Pursuant to section 3 of the WLFMR, the [Code] THSPR, FRR and the OSPR do not apply.

(b) The WLFMR does not contain its own harvest notification requirements. Accordingly, when operating in an area under a FDP a WL Licensee has no legal obligation to notify government of the commencement of harvesting.

For Road Related Activities

(c) Where a WL Licence holder is operating in an area under a grandfathered FDP section 53 (4) the WLFMR applies:

Woodlot Licence Forest Management Regulation:

Road inspection and maintenance

53 (4) Before a holder of a woodlot licence who is required to maintain a forest service road in compliance with section 63 (7) of the Act

a) builds a bridge,

b) installs a major culvert, or

c) installs a stream culvert on a fish stream,

the holder must give to the district manager written notice of the location of the bridge or culvert.

Otherwise, the WLFMR does not contain any other obligation to notify government of other road-related activities. So, where a WL Licensee is operating in an area under a FDP the sole notification requirements are under section 53 (4) of the WLFMR.

Potential Penalties for Failure to Fulfil the Notification Obligations

Legislation	Regulation	Max. Admin Penalty	Offence	Offence Max	Ticketable
FRPA/ ARR	THSPR 58 (2)	$5000.00	No	N/A	N/A
FRPA/ ARR	FPPR 85 (1)	$5000.00	Yes	$5000.00/ 6 months	No
FRPA/ ARR	WLPPR 74	$5000.00	Yes	$5000.00/ 6 months	No
Code/ ARR	FRR 20	$5000.00	No	N/A	N/A
Code/ ARR	WLFMR 53 (4)	$20,000.00	No	N/A	N/A
Code/ ARR	THSPR 58 (2)	$5000.00	No	N/A	N/A

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The Elements of the Offence

For the THSPR [section 58]

58 (1) In this section, "commencement" means initial commencement or recommencement after an inactive period of 3 months or more

2) A holder of an agreement under the Forest Act must notify the district manager, in accordance with subsection (3) before commencement of timber harvesting in a cutblock.

3) A notice under subsection (2) must specify

a) the location of the cutblock,

b) the holder of the agreement under the Forest Act,

c) the name of the holder's representative who is responsible for conducting the timber harvesting, and

d) the projected date for commencement

So, to prove the elements of the offence for section 58 of the THSPR, your investigative report must provide evidence:

1) that the client is the holder of an agreement (the FL, TFL, etc under the FA), and

2) that the client did not notify the district manager in accordance with subsection 3. It is impossible to prove a negative so the onus will be on the Licensee to show that they did notify, and

3) That trees have been felled or dead or damaged trees have been removed on the area where no notice has been provided.

For the FPPR [section 85]

85 (1) An agreement holder must notify the district manager before

(a) beginning (i) timber harvesting in a cutblock that comprises more than one hectare, or (ii) construction of a road that is a permanent access structure, and

(b) re-starting the activities described in paragraph (a) (i) and (ii) in a cutblock that comprises more than one hectare after an inactive period of 3 months or more.

(2) A notice under subsection (1) must specify

(a) the location of the timber harvesting or road, including any administrative identifier that relates to the location,

(b) a contact name and contact information, and

(c) the projected date for beginning timber harvesting or road construction.

So, to prove the elements of the offence for section 85 of the FPPR, your investigative report must show:

- That the person is an agreement holder, and
- That the agreement holder felled a tree in a block larger than 1 ha. or built a road that meets the definition of a permanent access structure, and
- That the agreement holder failed to notify the District Manager. The onus will be on the Licensee to show they notified the District Manager.

The Opportunity to be Heard (OTBH)

There is no requirement in law for an OTBH to be an oral hearing. The OTBH is whatever the DDM and the client want it to be. Generally this is based upon complexity, time, the gravity and magnitude of the alleged offence and the wishes of the client.

An OTBH can be a telephone call, a visit to the DDM's office, written submissions, or an oral hearing. It is simply an opportunity for the client to tell their side of the story and it is appropriate that they get to do it in the manner in which they are most comfortable. As well, they can chose to decline the offer. We have to remember it is the client's OTBH, not the C&E program's OTBH. Our job is to conduct the investigation and produce the Investigation Summary Binder.

It is appropriate to notify the DDM of your request for an OTBH on the matter [ERA 3.1 will contain a template letter for this] and to recommend to the DDM that due to uncomplicated nature of the allegation and the straight forward nature of the evidence that you recommend that a written hearing may be appropriate in the circumstances. The choice is up to the DDM and the client.

The Investigation Summary may read something like:

Executive Summary

On [date] we learned that harvesting had commenced on [Licence/ Block etc] greater than 1 ha. in size. A search of Ministry records revealed no notice of commencement. Subsequent to this we contacted [see Appendix XX] and [the Licensee] confirmed harvesting had commenced and that it had failed to provide a notice of commencement as required by section 58 of the THSPR. An subsequent inspection [see photos] confirmed that harvesting was underway for this block.

THSPR [or FPPR] section 58/ section 85 reads as follows:
[quote section]

The maximum penalty pursuant to the ARR is $5000.00

[Licensee] is the holder of an agreement under the FA, [Agreement], harvesting had commenced on [date] under CP XXX, and the Licensee failed to notify the District Manager prior to commencement.

The Ministry is recommending an administrative penalty in this matter for the following reasons:

1) The Licensee has failed to provide its notice of commence on X previous occasions. Those occasions have been dealt with via compliance notices. [You should provide specific, detailed circumstances and include any notes, copies of letters in the Appendix]. Apparently, given the most recent circumstances, [the Licensee] is unable to comply with its legal obligations to provide notification of commencement as it is obligated to do under the legislation. It is the Ministry's view that a determination on the record coupled with a penalty may act as a deterrent to future non-compliance.

2) Other than suspension or cancellation of the licence or prosecution, a determination and a subsequent administrative penalty is the sole enforcement option available to the Ministry.

3) It should be noted that the Ministry relies on commencement notices to properly schedule its inspections.

4) The public has a legislated right to know when activities on the land base are occurring.

5) Failure to levy a penalty, should any non-compliance be found, may send the message that the Ministry condones this failure to fulfil a legal obligation.

You can also speak to each of the penalty considerations pursuant to FRPA section 71 (5).

C&E Program Staff Bulletin 16 February 14, 2005

COST RECOVERY FOR ATTENDING COURT CASES, LITIGATION AND FOREST APPEALS COMMISSION HEARINGS

Purpose

The purpose of this bulletin is to provide guidance on the recovery of costs for C&E program staff where they may be required to attend court proceedings and or Forest Appeal Commission Hearings, and where they may be requesting legal counsel assistance on any particular file.

Background

C&E program staff, and other Ministry staff, may be required to give testimony or to act as an expert witness during quasi-criminal proceedings, criminal proceedings, civil litigation, or at Forest Appeal Commission [FAC] hearings. As well, C&E staff may from time to time be requesting legal counsel assistance on particular files.

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There is a means to be reimbursed for FAC costs. Section 84 (3) of FRPA reads as follows:

> *84 (3) Powers of the Comission*
>
> *The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.*

FAC procedures Manual - Section 4.5: Costs

Section 4.5 of the Forest Appeals Commission Procedures Manual reads as follows:

> *All of the statutes authorizing an appeal to the Commission give the Commission the power to order a party or intervenor to pay another party or intervenor any or all of the actual costs in respect of the appeal. A party seeking costs may make a submission to the Commission with respect to an award of costs at the conclusion of a hearing. The Commission will not make an order for costs unless a party requests that it be awarded costs. However, the Commission may, on its own initiative, ask a party whether it seeks costs. The Commission will not order a party to pay costs unless it has first given that party an opportunity to make submissions on this issue.*
>
> *The Commission does not follow the civil court practice of "loser pays the winner's costs". The Commission has adopted a policy that costs should only be awarded in special circumstances. Those circumstances include:*
>
> *(a) where, having regard to all of the circumstances, an appeal is brought for improper reasons or is frivolous or vexatious in nature;*
>
> *(b) where the action of a participant or the failure of a participant to act in a timely manner resulted in prejudice to any of the other participants;*
>
> *(c) where a participant, without prior notice to the Commission, fails to attend a hearing or to send a representative to a hearing when properly served with a Notice of Hearing;*
>
> *(d) where a party unreasonably delays the proceeding;*
>
> *(e) when a party's failure to comply with an order or direction of the Commission has resulted in prejudice to another party; and*
>
> *(f) where a party has continued to deal with issues which the Commission has found to be irrelevant.*

The Commission is not bound to order costs when one of the above-mentioned examples occurs, nor does the Commission have to find that one of the examples must have occurred to order costs. If costs are ordered, the Commission will ask for submissions with respect to the amount of actual costs incurred. The Commission may allow the submissions to be made orally or in writing. Where the Commission has ordered costs, the order may be filed in a court registry at which time it will have the same effect as an order of the court for the recovery of a debt in the amount stated. All proceedings may be taken as if the order were an order of the court.

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Pages 77 through 78 redacted for the following reasons:
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C&E Program Staff Bulletin 18 March 22, 2005

GUIDANCE TO C&E PROGRAM STAFF ON THE PURCHASE OF DIGITAL CAMERAS

Purpose

The purpose of this bulletin is to provide guidance to Compliance and Enforcement staff who are contemplating the purchase of a digital camera. This guide is provided for the information of C&E Program Staff. While every effort has been made to ensure accuracy, this guide is only intended to provide an overview.

Overview

Before purchasing a digital camera, purchasers should do research on the various models and manufacturers, and/or talk to a member of the Technical Advisory Committee to help make the purchase of a digital camera less onerous.

Background

The Technical Advisory Committee recently completed a Province-wide survey to determine equipment being used within the C&E program. As part of this survey, respondents were asked to rate their current equipment. The surveys were summarized and the top 5 digital cameras brands based on user preference have been determined.

Digital Camera Features

Ensure that the features you require are available; this will help you to select the camera that suits your needs. **The following are some of the features you should consider when selecting a digital camera**:

1. The Number of **program shooting modes**;
2. **Sequential shooting**: is the camera able to take rapid succession of still photos;
3. Is there a **Macro Mode** for shooting close ups;
4. **Movie Recording**: with or with out sound;
5. **Close up play back**: enlarge the picture in the monitor to check details of the selected image;
6. **Index display**: to view several thumbnail pictures on the monitor at once;
7. **Protecting pictures**: protect pictures from accidental erasing;
8. **Video playback**: to view your pictures and movies on a TV;

9. **Panorama Mode**: connect over lapping images into a single picture using the panorama mode and camera software;
10. **Battery type**: will the camera operate with "Double A" batteries or is it a rechargeable battery pack. Double A's are readily available, if you purchase a camera that has the rechargeable battery packs ensure that extra battery packs are purchased;
11. **AC/DC charger**: see if there is a charger available for the office and the vehicle, allows flexibility;
12. **Weather-Resistant**: is the camera body resistant to poor weather days;
13. **Water-Resistant or Waterproof**: is the camera body water resistant or water proof;
14. **Zoom Lens**: is it available and what power zoom is the lens;
15. **Monitor or view screen**: what is the size of the screen, and how is the clarity;
16. **Memory**: how much memory is available and what type of memory;
17. **Compatibility**: is it compatible with our computer systems (Plug and Play);
18. **Ease of operation**: how long will it take for someone to be able to use it competently?
19. **Software**: what type of software is included with the camera and will it meet your needs for downloading, enhancing, storage, cataloguing and creating reports (due to the government wide Workstation Refresh, some software packages might be excluded from installation on MoF computers);
20. **Card reader**: is a memory card reader required to down load or can the camera be hooked up to a computer (Plug and Play);
21. **Text labelling**: are you able to text label photos from the camera, are date and time of photo recorded on photo or file;
22. **Mega pixel**: how many mega pixel does the camera record. The greater the pixel count of an image, the higher the resolution of that image;
23. **Image Format**: what type of format does the camera and software record and save the images at and is there several options that can be utilized by the camera and software.

Ratings

Although the initial brand ratings were determined by using a summary of the TAC survey, the models listed below are the best presently available on the market based on required resolution and price range.

Each model rating is based on expert and user reviews found on the internet.

Cameras with reviews lower than the 75% review/rating level were not considered. All rated cameras fall within the $450.00 - $500.00 range and have resolutions ranging from 4.0 – 6.3 mega pixels. The models are listed in order of rating.

Branch Recommendation:

Based on the comparisons and reviews below, C&E Branch recommends the Canon, Sony or Nikon cameras. All of these cameras will more than meet the needs for C&E field use, however the Canon and the Sony have a higher resolution and should supply better photo quality. Although the Fugi and Olympus models met the rating criteria, reviewers felt that the Fugi has problems in low light conditions and the Olympus, although weather resistant, has photo quality issues.

Purchasers wishing to buy a camera case should consider an after-market case product that will not only hold the camera but will also accommodate additional photography equipment such as tripods, extra batteries, extra lens etc. After market products are available in various price ranges and sizes including waterproof and backpack models. The suppliers listed in the *Suggested Suppliers* section (after the comparison table) should be able to meet your needs.

Camera Comparisons

The comparison table on the next two pages provides a detailed comparison of five digital cameras:

- Canon PowerShot A95 Digital Camera
- Sony DSCW5 Cyber-shot Digital Camera
- Nikon Coolpix 4800 Digital Camera
- Fuji FinePix E550 Digital Camera
- Olympus Stylus 500 Digital Camera

Comparison Table

Product	Canon PowerShot A95 Digital Camera	Sony DSCW5 Cyber-shot Digital Camera	Nikon Coolpix 4800 Digital Camera	Fuji FinePix E550 Digital Camera	Olympus Stylus 500 Digital Camera
Price	$450	$450	$470	$489	$450
Dimensions (WxDxH)	10.11 cm x 6.46 cm x 3.47 cm	9.10 cm x 6.00 cm x 3.71 cm	10.6 cm x 6.6 cm x 5.4 cm	10.5 cm x 6.3 cm x 3.44 cm	9.9 cm x 3.1 cm x 5.55 cm
Weight	235 grams	253g loaded and ready	225 grams without battery	200 grams (excluding batteries)	165 grams (without battery and media card)
Integrated Memory	N/A	32MB Integrated Memory	13.5MB Integrated Memory	N/A	N/A
Media Type	Compact Flash (CF) Card Type I	Memory Stick expansion slot	SD Memory Card Expansion Slot	xD Picture Card	xD Picture Card
Sensor Resolution	5.0 Mega pixel	5.1 Mega pixels	4.0 Mega pixel	6.3 Mega pixel	5.0 Mega pixels
Shooting Modes	Auto, Creative Zone (P, Tv, Av, M, C), Image Zone (Portrait, Landscape, Night scene, Fast shutter, Slow shutter), Special Scene Mode (Foliage, Snow, Beach, Fireworks, Underwater, Indoor, Kids & Pets, Night Snapshot), Movies, Stitch Assist	Twilight, Twilight Portrait, Soft Snap, Landscape, Beach, Snow, and Candle	Auto, Scene Assistance (Portrait, Landscape, Sports, Night Portrait), Scene (Party/Indoor, Beach/Snow, Sunset, Dusk/Dawn, Night landscape, Close up, Museum, Fireworks show, Copy, Back light, Panorama assist)	Auto, Manual, Continuous shooting, Portrait, Landscape, Sports, Night Scene, Movie recording, Programmed AE, Aperture Priority AE, Shutter Priority AE	Automatic
Lens Aperture	f/2.8 (W) - f/8.0 (W), f/4.9 (W) - f/8.0 (T)	f/2.8-5.2	N/A	F2.8 - F8 (10 steps in 1/3 EV increments; Manual/Auto selectable)	f 3.1/5.2
Focus Adjustment	9-point AiAF/1-point AF (FlexiZone, fixed to centre)	Autofocus	AutoFocus	Auto focus (Area Focus, Multi, Center) / Manual focus / Continuous AF	Automatic
Min Focus Range	Macro AF: 5 - 45cm (WIDE), 25 - 45cm (TELE)	Macro AF: 6cm	Macro: Approx. 1cm	Approx. 7.5cm - 80cm	Super Macro Mode: 7cm; 2.7cm x 2.0cm
Focal Length	38-114mm, f/2.8 (W) - 4.9(T)	F=7.9-23.7mm (35mm equivalent: 38-114mm)	6.0-50mm (35mm format equivalent to 36-300mm)	Equivalent to 32.5 – 130mm on a 35mm camera	5.8-17.4mm (35mm equivalent to 35-105mm)
Optical Zoom	3.0x	3x	8.3x	4x	3x
Digital Zoom	4.1x	6x	4x	6.3x	4x

Product	Canon PowerShot A95 Digital Camera	Sony DSCW5 Cyber-shot Digital Camera	Nikon Coolpix 4800 Digital Camera	Fuji FinePix E550 Digital Camera	Olympus Stylus 500 Digital Camera
Microphone	N/A	Built-in Electric Condenser Microphone	Yes	N/A	N/A
Product	Canon PowerShot A95 Digital Camera	Sony DSCW5 Cyber-shot Digital Camera	Nikon Coolpix 4800 Digital Camera	Fuji FinePix E550 Digital Camera	Olympus Stylus 500 Digital Camera
Red Eye Reduction	Yes	Yes	Yes	Yes	Yes
Camera Flash	Built in Flash - Modes: Auto, On/Off, Red-Eye Reduction is available	Built-in Flash settings: Auto Flash, Forced Flash, No Flash, Slow Synchro	Built-in Speedlight: Shooting range: approx. 0.4-4.3m/1.4-14.1 ft . (W), approx. 1.0-2.6m/3.3-8.6 ft. (T); Flash modes: Auto, Red-eye Reduction, Flash Cancel (off), Anytime Flash (fill flash) and Slow Sync.	Auto flash using flash control sensor	Built in Automatic Flash
Viewfinder	Real-image optical zoom viewfinder	Optical Viewfinder	N/A	Real-image optical viewfinder, approximately 77% coverage	No
Battery	4 x 'AA' Batteries	2 x AA NiMH (29g) Rechargeable Batteries Included	Rechargeable Li-ion Battery EN-EL1 (included), Battery Charger MH-53 (included)	2 AA type Ni-MH batteries (included) or AC power adapter AC-3V (optional)	Li-Ion Rechargeable Battery (LI-12B)
Display	1.8 inch low-temperature polycrystalline silicon TFT colour LCD (with vari-angle function)	2.5-inch type TFT LCD Screen	1.8-inch; 118,000-dot low-temp. polysilicon TFT LCD with brightness adjustment	2.0-inch low temperature polysilicon TFT (154,000 pixels)	2.5-Inch (6.35cm) HyperCrystal LCD, approx. 215,000 pixel
Manufacturer Warranty	One Year Limited Warranty	One Year Limited Warranty	Two Year Canadian Warranty	One Year Limited Warranty	One Year International Warranty
Supported Flash Memory	CF Type I	Memory Stick	SD Memory Card	xD	N/A
Shipping Weight	1.28	1.12	1.3	0.96	0.94
Flash Memory	N/A	N/A	N/A	16MB xD Picture Card Included	32MB xD Picture Card Included
Digital Storage Media	Compact Flash	N/A	N/A	16MB xD Picture Card	xD Picture Card
Webcam Capability	N/A	N/A	N/A	With Windows XP SP1 + Windows Messenger 5.0+	N/A

Suggested Suppliers

The following list of suggested suppliers is for reference only. Purchasers in more remote location s may wish to use on-line suppliers.

- London Drugs http://www.londondrugs.com
- McBain Cameras http://www.mcbaincamera.com
- Blacks Photography http://www.blackphoto.com
- Costco http://www.costco.ca
- Staples http://www.staples.ca
- Future Shop http://www.futureshop.ca
- PriceGrabber.com http://ca.pricegrabber.com

Detailed Digital Camera Specifications can be accessed using the following link:
http://icw.for.gov.bc.ca/HEN/Bulletins/CEPS/Attachments/CEPS18_Attachment_Camera_Specs.pdf

Additional information is also available from the Technical Advisory Committee (TAC) or by referencing the following website:
http://www.imaging-resource.com/DIGCAM01.HTM

C&E Program Staff Bulletin 20 May 13, 2005

GUIDANCE TO C&E PROGRAM STAFF ON THE APPLICATION OF SECTION 105.1 OF THE FOREST ACT AND THE "CHANGED CIRCUMSTANCE" PROVISIONS OF THE APPRAISAL MANUALS

Purpose

The purpose of this bulletin is to provide guidance to C&E program staff on the question of whether or not it is appropriate to proceed with an allegation of non-compliance with section 105.1 of the *Forest Act* (FA) where the effect of the alleged error is less than the changed circumstance allowances in the Appraisal Manuals (AM, Coast and Interior).

Introduction

> *Consultation and input from Ministry of the Attorney General legal counsel, Revenue Branch Timber Pricing staff, and the Managers for Litigation and Issues inform the following guidance.*

C&E program staff have wondered about the linkage between s.105.1 of the FA and the changed circumstance allowances in the AMs. The answer, in brief, is that there is **no** linkage between them.

Section 105.1 of the FA requires the licensee to submit accurate information for the appraisal, and for any other purpose under the FA. Inaccurate appraisal information is information that does not accurately represent site specific conditions, least cost development, harvesting or transportation methods, or the timber authorized for harvest.

"Changed circumstances" in the AMs means that circumstances or plans are different from what they were at the time of the appraisal or reappraisal. Each of the AMs provides for an allowance (25% in the Coast AM and 15% in the Interior AM). The allowance simply means that unless the changed circumstance is at least 25% on the Coast or 15% in the Interior, the licensee need not immediately notify the District Manager of the change and a reappraisal need not be done.

Clearly, section 105.1 and the changed circumstance provisions of the AM are different concepts and relate to different concerns. Accordingly, there is no reason why one would trigger the other (i.e. why a changed circumstance under the AM would trigger an allegation under s.105.1 of the FA, or why a changed circumstance of less than the threshold amounts would lead you to believe that s.105.1 had not been contravened).

Revenue Branch's view is that the changed circumstance thresholds are triggers for licensees to inform the district manager of changed circumstances, period. They do not indicate how much inaccuracy the government is willing to accept in appraisal submissions. This is consistent with the C&E view.

In a nutshell, s.105.1 requires accurate appraisal information. If activities on the ground ultimately do not reflect the information submitted on the appraisal data sheet, the licensee must ensure that any subsequent submission for reappraisal reflects the realities/costs of those activities. However, between the effective date of the original appraisal and any subsequent reappraisal, the licensee is only obliged to submit the new information where the changed circumstances meet or exceed the percentages in the appropriate AMs.

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Pages 87 through 90 redacted for the following reasons:
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C&E Program Staff Bulletin 21 May 03, 2005

INTERIM PRICING INSPECTION PROCEDURE

Purpose

The purpose of this bulletin is to assist C&E program staff in inspecting for compliance with Section 105.1 of the *Forest Act*, specifically the accuracy of information submitted by the holder of an agreement to the government for use in determining, re-determining or varying a stumpage rate. Section 105.1 does not apply to appraisals submitted by BCTS staff, but does apply to any appraisals submitted by BCTS licence holders (i.e. TSL Majors and Forest Licences).

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C&E Program Staff Bulletin 22 July 19, 2005

DIGITAL PHOTOGRAPHY\IMAGE FILE HANDLING

Definitions

"**Image enhancements**" where the original image has been adjusted for one or more of exposure, brightness, contrast, hue, saturation or lightness.

"**Image alteration**" where the original image has been adjusted beyond the scope of image enhancements.

Purpose

The purpose of this bulletin is to provide a consistent procedure for C&E staff when handling and storing Digital Photography/Video Photography image files.

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Pages 99 through 102 redacted for the following reasons:
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C&E Program Staff Bulletin 23 July 22, 2005

GUIDANCE ON THE INTERACTION BETWEEN SECTION 75.21 OF THE FOREST ACT [AND SECTION 2 OF THE CUT CONTROL REGULATION] AND THE APPLICATION OF SECTION 52 [UNAUTHORIZED HARVEST] OF FRPA

Purpose

The purpose of this bulletin is to provide guidance to C&E program staff on when to apply section 52 of FRPA to a Forestry Licence to Cut (FLTC) or a Community Salvage Licence (CLS).

Guidance

For all FLTCs and CSLs, where the date of scale is on or after December 13th, 2004, it is recommended that C&E program staff do **not** automatically apply section 52 of FRPA exclusively to circumstances where the volume harvested exceeds the maximum provided in the FLTC.

The term FLTC is interchangeable with CSL throughout this document.

Background on the Legislation

Section 75.21 of the Forest Act [FA] came into effect on May 13th, 2004:

> *Limit on total cut for forestry licence to cut and community salvage licence*
>
> *75.21 (1) In this section, "licence" means a forestry licence to cut or community salvage licence.*
>
> *(2) The holder of a licence must ensure that the volume of timber harvested under the licence does not exceed the maximum harvestable volume specified in the licence.*
>
> *(3) If the volume of timber harvested under a licence exceeds the limit specified in subsection (2), the holder of the licence must pay to the government the penalty determined under subsection (4)*
>
> *(4) The penalty under subsection (3) is the product of*
>
> *(a) the volume of timber harvested under the licence that exceeds the limit referred to in subsection (2), and*
>
> *(b) the prescribed rate.*
>
> *(5) A penalty under this section is in addition to stumpage payable or another penalty under this Act or another enactment.*

However, because there was no concurrent prescribed rate that came into effect at the same time, the above FA amendment had no affect until section 2 of the Cut Control Regulation [CCR] came into force on December 13th, 2004:

> *Excess harvesting penalty for Short Term Licences, Forestry Licences to Cut and Community Salvage Licences*
>
> *2 (1) In this section, "licence" means a licence as defined in sections 75.2 (1) and 75.21 (1) of the Act.*
>
> *(2) For the purposes of sections 75.2 (4) (b) and 75.21 (4) (b) of the Act, the prescribed rate is*
>
> *(a) the average stumpage rate that was applicable to timber harvested under the licence during the last year in which stumpage was payable in respect of that timber, for the portion of the volume of timber harvested in excess of the applicable limit under section 75.2 (2) or (2.1) or 75.21 (2) of the Act that is less than or equal to 10% of the total volume of timber authorized for harvest over the term of the licence, and*
>
> *(b) twice the average stumpage rate that was applicable to timber harvested under the licence during the last year in which stumpage was payable in respect of that timber, for the portion of the volume of timber harvested in excess of the applicable limit under section 75.2 (2) or (2.1) or 75.21 (2) of the Act that exceeds 10% of the total volume of timber authorized for harvest over the term of the licence.*

So section 2 of the CCR established the prescribed rate, and because it did not come into effect until December 13th, 2004, this has the affect of bringing both s. 75.21 of the FA and section 2 of the CCR into effect as of December 13th, 2004.

Section 52 of FRPA states that a person must not cut, damage, destroy or remove Crown timber without authority.

Forestry Licences to Cut [FLTCs] contain the statements:

> *"The Licensee may harvest up to [500] cubic metres from the Licence area during the term limited to the following:*
>
> *(a) killed or damaged as a result of fire, insects, disease or wind throw,*
>
> *(b) [species and grade].*

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Pages 105 through 107 redacted for the following reasons:
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GUIDANCE ON THE INTERPRETATION OF SECTION 18 OF THE WILDFIRE ACT AND PART 4 OF THE WILDFIRE REGULATIONS WITH RESPECT TO GOVERNMENT NON-COMPLIANCE.

This Bulletin is for information purposes only and does not represent legal advice

Purpose

The purpose of this bulletin is to provide guidance to C&E program staff on the application of section 18 of the *Wildfire Act* and section 18 of Wildfire Regulation.

Legislation

Section 18 of the *Wildfire Act* states:

Right of government to use fire

18 The minister may cause fire on, or allow fire to be introduced onto, Crown land, other than Crown land leased from the government, for the purpose of

(a) reducing the likelihood of unwanted fire on the area,
(b) increasing public safety,
(c) enhancing forest land resources and values,
(d) enhancing grass land resources and values, or
(e) meeting other government objectives.

Section 18 of Part 4 of the Wildfire Regulation states:

Right of government to use fire

18 This Part does not apply to or in respect of a fire to which section 18 of the Act applies.

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Pages 109 through 110 redacted for the following reasons:
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C&E Advice Bulletin 25 **September 2005**

GUIDANCE TO ALL MINISTRY OF FORESTS AND RANGE STAFF ON THE REPORTING OF AN INCIDENT OR ACT THAT MAY BE NON-COMPLIANT WITH FORESTRY LEGISLATION

The purpose of this Bulletin is to advise Ministry staff on the recommended process for advising District and or Regional C&E staff where Ministry staff may have reason to believe non-compliance with provincial legislation may have occurred.

Ministry of Forests Policy 16.6– Investigations reads as follows:

"All Ministry personnel who observe actual or suspected contraventions of any provincial or federal legislation during the course of their duties will immediately report the details of the incident to the appropriate Compliance & Enforcement staff."

As well, each of the Roles and Responsibilities Matrices between C&E and other program areas such as BCTS, Stewardship, Tenures, Revenue, Range and Recreation, state that program area staff are responsible for reporting all observed incidents of potential non-compliance with the legislation to C&E program staff. Ministry staff that suspect that a contravention of any forestry legislation has occurred should proceed as follows:

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THE C&E PROGRAM SEEKS AND APPRECIATES YOUR SUPPORT.

C&E Program Staff Bulletin 26 November 2, 2005

GUIDANCE TO C&E PROGRAM STAFF ON THE GATHERING AND RETENTION OF EVIDENCE DURING THE COURSE OF AN INSPECTION OR INVESTIGATION

Purpose

The purpose of this bulletin is to provide guidance on what physical evidence can be gathered & when it can be gathered.

The Legislation

Part 6, Division 1, Inspecting, Stopping and Seizing of the *Forest and Range Practices Act* (FRPA) describes a forest official's authorities and obligations. It is an expectation of all forest officials that they have an excellent working knowledge of Part 6 of FRPA.

Simply put, FRPA empowers officials to enter, at any reasonable time, any land or premises to conduct an inspection if that land or premises is the site of a forest or range practice that is regulated under the Acts or is carried on by a person who is required under the Acts to hold a licence or permit to carry out that practice.

The same principle applies to vehicles. If there are reasonable grounds to believe the vehicle contains or is transporting timber, special forest products, seed, botanical forest products or hay, or the operator is contravening or has contravened one or more provisions of the Acts, we have the authority to require them to stop and to then inspect the vehicle. These are our broad and significant inspection powers.

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Obligation of person inspected

63 (2) A person who

(a) is in possession or apparent possession of the land or premises,

(b) has apparent custody or control of the records or property being inspected,

(c) is in charge of the activity being inspected, or

(d) is operating a vehicle or vessel stopped under section 60,

must produce if and as required by the official

(e) proof of identity,

(f) a licence, a permit or an operational plan held by the person under the Acts, or

(g) a record required under section 59 (4).

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C&E Program Staff Bulletin 27 November 2, 2005

GUIDANCE TO C&E PROGRAM STAFF ON SEARCH WARRANTS AND SEIZURE

Purpose

The purpose of this bulletin is to discuss the gathering of evidence for the purposes of the prosecution of an offence under the *Forest Act*, the *Forest Practices Code of British Columbia Act* (the Code) and/or the *Forest and Range Practices Act* (FRPA) and the interaction between this and our authority to seize pursuant to section 67 and 68 of FRPA.

Introduction

Section 67 of FRPA provides officials with the authority to seize timber or timber products we believe are Crown property. Section 68 of FRPA provides an official with the authority to seize livestock on Crown land without authority. The purpose of those authorities is to protect the Crown's interests and to return to the Crown its rightful property. That is why only certain items can be seized and even then only in certain circumstances.

Sections 67 and 68 are not intended to allow officials to seize items for the purpose of obtaining evidence in aid of the prosecution of a quasi-criminal or *Criminal Code (Canada)* offence. If we wish to seize items as evidence of offences under FRPA or the *Forest Act*, section 64 of FRPA allows us to submit an information (Offence Act Form 1) to obtain a warrant to search and seize under the *Offence Act* (a Warrant).

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Pages 116 through 119 redacted for the following reasons:
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C&E Program Staff Bulletin 28 November 18, 2005

GUIDANCE TO MOFR STAFF ON CONFIDENTIALITY AND ITS APPLICATION TO C&E PROGRAM INVESTIGATIONS

Purpose

This Bulletin is intended to provide guidance to MoFR staff on the confidentiality provisions of the *Forest and Range Practices Act* and explain why certain investigations and inspection processes require confidentiality.

Introduction

The *Forest and Range Practices Act* section 109 (3) reads as follows:

> *Confidentiality and Disclosure to Government*
>
> *109 (3) A person must not disclose any information obtained in the exercise of a power or the performance of a duty or function under this Act, the regulations or the standards except*
>
> *(a) as required for the performance of his or her duties under this Act or the regulations, or*
>
> *(b) as permitted in this section or under the Freedom of Information and Protection of Privacy Act or the regulations under that Act.*

Public Service Standards of Conduct Policy Directive 5.4 reads, in part, as follows:

> *Confidentiality*
>
> *Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.*

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C&E Program Staff Bulletin 29 March 6, 2006

INFORMATION ON THE ARCHAEOLOGY BRANCH OF THE MINISTRY OF TOURISM, SPORTS AND THE ARTS

Purpose

The purpose of this bulletin is to provide information about the Ministry of Tourism, Sports and the Arts, Archaeology Branch to Compliance & Enforcement (C&E) Staff.

Introduction

While conducting routine inspections, C&E staff may encounter disturbances to Archaeology sites. Normally these sites will have been identified through an Archaeology Impact Assessment (AIA) before the tenure was issued, however unknown sites may be encountered. C&E staff may also receive information from the public or from First Nations Groups in the form of public complaints. Archaeology sites may include pre-1946 Culturally Modified Trees (CMT's), cache pits, pit houses, etc. depending on location within the province.

C&E Staff do not have the authority to enforce *Heritage Conservation Act* contraventions; however C&E staff have an obligation to **Observe, Record and Report** the information and ensure that it is forwarded to the proper authorities.

Discussion

Provincial archaeology programs are designed to encourage and facilitate the protection, conservation and public appreciation of British Columbia's archaeological resources as mandated by the *Heritage Conservation Act*. Services are delivered through two program areas in the Archaeology Branch:

> The **Permitting and Assessment Section** administers a permit system under the Act. It also represents archaeological resource interests on review committees established under the *Environmental Assessment Act*, and provides archaeological resource input to the development of provincial Land and Resource Management Plans.
>
> The **Archaeological Site Inventory Section** administers the Provincial Heritage Register under the Heritage Conservation Act, and records, maintains, and distributes heritage resource information. This information supports land use planning and impact assessments at the provincial, regional, and local levels, and is typically supplied to private industry, other government agencies, first nations, archaeologists, and the general public.

It is recommended that each office have a standard operating procedure in place that would outline the appropriate process to follow in the event that an impacted site is reported to staff, or is discovered during routine field inspections.

In an effort to assist Ministry of Forests and Range C&E staff, Archaeology Branch has supplied the following contacts to provide assistance:

General Discussion on Archaeology Issues
Doug Glaum, Manager
Archaeological Site Inventory Section
(250) 952-4174

Disturbed Archaeology Sites
Ray Kenny, Manager
Permitting and Assessment Section
(250) 952-4306

The following link will direct staff to the Ministry of Tourism, Sports and the Arts, Archaeology Branch Website.

http://www.tsa.gov.bc.ca/archaeology/

Summary

If you believe that you have encountered a disturbed archaeological site, your duty is to **Observe, Record and Report** your findings to the above contacts.

C&E Program Staff Bulletin 30 March 15, 2006

C&E AND BCTS ROLES AND RESPONSIBILITIES - REPORTING NON-COMPLIANCE AND SHARING INFORMATION

Purpose

The purpose of this bulletin is to establish a common understanding of the roles and responsibilities of C&E and BCTS with respect to reporting and investigating activities related to alleged incidences of statutory and contractual non-compliance on timber sale licence operations.

Through improved understanding of respective roles and responsibilities staff from both C&E and BCTS can work in a co-operative and respectful manner when identifying, reporting and investigating alleged incidences of non-compliance related to timber sale licence operations.

References

BCTS/C&E Roles and Responsibility Final Report

> *"To ensure the Ministry of Forests functions efficiently and cost-effectively, duplication of effort between BCTS and C&E should be avoided. Both programs perform monitoring functions, however with different objectives and possibly at differing frequencies. The objective of BCTS monitoring is to ensure contractual obligations are fulfilled, while the objective of C&E inspections is to ensure legislative obligations are fulfilled. The two programs will need to act co-operatively but independently to deliver their respective mandates."*

MoFR Policy 16.6: Investigations, in part, reads as follows:

> *"It is Ministry policy that:*
>
> *All Ministry personnel who observe actual or suspected contraventions of any provincial or federal legislation during the course of their duties will immediately report the details of the incident in writing to those staff within their responsibility centre who have compliance and enforcement [C&E] responsibilities.*
>
> *At the time of discovery, all Ministry personnel will document the scene to the best of their ability."*

BCTS/C&E Roles and Responsibility Matrix

To facilitate a clear understanding of the respective roles and responsibilities of the BCTS and C&E programs a matrix was developed clarifying key BCTS and C&E

responsibilities with respect to timber sale administration, client services, environmental management system (EMS) conformance monitoring, and compliance inspections as well as investigations of statutory non-compliance.

With respect to investigations, the R&R Matrix articulates that:

- C&E investigates for compliance with statutory obligations, which includes determining the facts, electing an enforcement option if any, any evidence of a statutory defence, and what party is responsible.
- BCTS investigates for root cause to develop preventative actions [e.g. what can BCTS do to insure this doesn't happen again] and this also includes determining the facts.

The R&R Matrix can be found at:

http://icw.for.gov.bc.ca/hen/Advice/Roles/BCTS/index.htm

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Pages 127 through 129 redacted for the following reasons:
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CEPS Bulletin 31 **December 03, 2007**

GUIDANCE TO C&E PROGRAM STAFF ON THE APPLICATION OF THE FOREST SERVICE ROAD USE REGULATION AND OUR ABILITY TO IMPACT SAFETY ON LOGGING ROADS OTHER THAN FOREST SERVICE ROADS

Purpose

The purpose of this bulletin is to provide guidance to C&E program staff on actions they may take to address speeding and safety on logging roads.

Introduction

C&E officials have the jurisdiction to regulate the safe use of Forest Service Roads (FSRs) in British Columbia and have a duty to act on observed non-compliances or incidences occurring on Road Permit (RP) roads, wilderness roads, and non-status roads.

Road Permit holders and other industrial users have a responsibility and obligation to ensure these permitted roads are used in a safe manner. Actions that may be taken on FSRs include compliance actions, enforcement actions, and the reporting of observations. Actions that may be taken on non-FSRs include observing, recording and reporting of these incidents.

The Legislation

The Forest Service Road Use Regulation (FSRUR) sets out the requirements for vehicle use on FSRs. This includes but is not limited to speed restrictions, use of radios, and driving contrary to a traffic control devise. For example Section 4 and 6 of the FSRUR states:

Section 4: Speed Restriction

4. A person must operate a motor vehicle on a forest service road at a speed that

a. is safe for the conditions, and

b. does not exceed the lesser of

i. 80 km/h, and

ii. the speed posted on a relevant traffic control device.

Section 6(5): Traffic Control Devices

5. *A person must not operate a vehicle contrary to a traffic control device.*

The *Violation Ticket and Administrative Fines Regulation* (VTAFR) provides the authority for enforcement officers to issue tickets and fines for many of the offences related to the use of motor vehicles. Ministry of Forest and Range (MoFR) staff who are designated as officials may issue tickets for offences under the FSRUR. MoFR Policy 16.11: Violation Ticketing guides MoFR staff for the issuing and administration of violation tickets. Two examples of common offences and ticketed amount are:

- **Section 4** - Speed on forest service road, $86;
- **Section 6(5)** - Disobey traffic control device, $86.

In addition, MOFR C&E Officials may enforce Section 2, which imposes some *Motor Vehicle Act* provisions, of the FSRUR through Section 22(2)(a) of FRPA.

For a complete understanding of the FSRUR requirements and provisions of the VTAFR it is incumbent on staff to read those regulations. We also recommend a peer review and discussion of these regulations by district and regional C&E program staff.

The use of RP roads are regulated under the *Industrial Roads Act* (IR). Specifically the *Vehicular Traffic on Industrial Roads Regulation* (VTIRR) regulates speed on industrial roads. In summary, users must operate motor vehicles in accordance with the conditions of the roadway, the posted limit, and if not posted to a maximum speed of 80km/h. For more detail refer to Sections 68 and 49 are more of the VTIRR. The Ministry of Transportation is responsible for the administration of the IR Act and the VTIRR.

The *Motor Vehicle Act* (MVA) regulates the safe use of motor vehicles on highways. A review of this legislation indicates that it applies to non-status roads and wilderness roads. This Act includes the requirements that the operator of a motor vehicle must drive with due care and attention, in consideration of other users, and not at a speed excessive for conditions. The RCMP has the authority to enforce the MVA. The RCMP also have jurisdiction for the FSRUR.

WorkSafeBC, also known as The Workers' Compensation Board of BC, has the mandate to regulate the safety of workers in BC. This includes ensuring compliance with the *Occupation Health and Safety Regulation*. Employers and employees are responsible to conduct their activities in a safe manner and when doing so not create an undue hazard to the health and safety of any person. This includes truck driving.

Jurisdiction

C&E staff designated as officials under Section 1 of *Forest and Range Practices Act* (FRPA) are clearly able to act in accordance with FRPA and its regulations. This bulletin recognizes that other ministries, agencies, and police officers may have jurisdiction, which may or may not overlap with that of officials.

There is some ambiguity on the issue of jurisdiction. As such it is incumbent on each of those other ministry's, agencies, and police officers to ensure they are understand their respective statutes and regulations and their authorities.

s.15, s.13

Pages 133 through 137 redacted for the following reasons:
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Not Responsive
s.13, s.15

A summary of a recent Supreme Court of Canada decision in R. v. Jorgenson, [1995] 4 S.C.R. 55, described it this way:

> *"In order for an accused to rely on an officially induced error of law as an excuse, he must show, after establishing he made an error of law (or of mixed law and fact), that he considered his legal position, consulted an appropriate official, obtained reasonable advice and relied on that advice in his actions. When considering the legal consequences of his actions, it is insufficient for an accused who wishes to benefit from this excuse to simply have assumed that his conduct was permissible. The advice came from an appropriate official if that official was one whom a reasonable individual in the position of the accused would normally consider responsible for advice about the particular law in question. If an appropriate official is consulted, the advice obtained will generally be presumed to be reasonable unless it appears on its face to be utterly unreasonable. The advice relied on by the accused must also have been erroneous, but this fact does not need to be demonstrated by the accused. Reliance on the official advice can be shown by proving that the advice was obtained before the actions in question were commenced and by showing that the questions posed to the official were specifically tailored to the accused's situation."*

The Ontario Court of Appeal in R. v. Camcoil Thermal Corporation and Parkinson (1986), 27 C.C.C. (3d) 295 (Ont. C.A.) stated that:

> *"The defence of 'officially induced error' is available as a defence to an alleged violation of a regulatory statute where an accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. In order for the accused to successfully raise this defence, he must show that he relied on the erroneous legal opinion of the official and that his reliance was reasonable. The reasonableness will depend on several factors including the efforts he made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave him the advice, and the clarity, definitiveness and reasonableness of the advice given."*

The FAC has decided that the defence of officially induced error applies to the administrative remedies regime under the Code. All elements of the defence must be made out before it can be successful. An officially induced error of law defence will only be successful in the clearest of cases. The onus is on the accused to establish the defence on the balance of probabilities. Where the defence is successfully made, the proper result is that a contravention is considered not to have occurred.

Pages 139 through 145 redacted for the following reasons:
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Not Responsive
s.13, s.15

Interpretive Bulletin on the Application of the Wildfire Regulation for Compliance and Enforcement and Protection Staff

Purpose and Scope:

This bulletin is intended to provide guidance to C&E and Protection staff as to the intended application of certain provisions of the Wildfire Regulation. This guidance is not intended to provide legal advice as to the application of legislation.

Background

Two of the cornerstones of the *Wildfire Act* and the Wildfire Regulation are that they are to be results-based and to incorporate the concept of professional reliance.

The drafting of the Wildfire Regulation focused on being results-based, opposed to the prescriptive provisions under the *Forest Practices Code of British Columbia Act* (the FPC) and regulations. However, this may result in vagaries of application and interpretation. The FPC provisions were generally based on objective tests (e.g. specific numbers of fire tools) which has been changed under the Wildfire Regulation to a subjective test (e.g. sufficient fire fighting tools). It is intended that this bulletin will bring clarity to some of these issues.

Generally, in a results-based environment, meeting requirements of the regulation such as provisions for fire suppression systems, sufficient fire tools and fire break requirements are examined in detail during an inspection or a fire investigation.

The challenge comes for those persons who are responsible for complying with the results-based provisions in the regulation, for example, in determining when they have "an adequate fire suppression system". A person carrying out an industrial activity may well rely on past practices or on the advice of an expert to assist them in determining whether they have "an adequate fire suppression system" in a particular situation or condition.

s.13, s.15

Pages 147 through 152 redacted for the following reasons:
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S.13, S.15
s.13, s.15

C&E Advice Bulletin **November 2007**

Contraventions Against Corporation and Director/Officer

INTRODUCTION

The *Forest and Range Practices Act* ("*FRPA*") and its predecessor, the *Forest Practices Code of British Columbia Act* (the "*Code*"), provide C&E with the authority to pursue contraventions against directors or officers of a corporation in addition to contraventions against the corporation itself. Guidance on how to properly pursue such a contravention is found in the November 24, 2006 reasons of the Forest Appeals Commission (the "FAC") for appeal No. 2005-FOR-015(a), *Darren Smurthwaite v. Government of British Columbia (Forest Practices Board, Third Party)*.

Pages 154 through 158 redacted for the following reasons:
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S.13

C&E Advice Bulletin **January 2008**

Tort of Negligent Investigation

INTRODUCTION

A recent Supreme Court of Canada decision, *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 ("*Hill*"), has affirmed that police officers can be sued for the tort of negligent investigation. A "tort" is a wrongful act for which damages can be claimed by an injured party. This bulletin is intended to advise C&E and Protection staff of this development and its implications for the performance of their inspections and investigations.

BACKGROUND

This decision arose out of a series of events that resulted in a person being investigated by the police, arrested, tried, wrongfully convicted of robbery, and ultimately acquitted after spending more than 20 months in jail for a crime he did not commit.

Mr. Hill sued the police for negligent investigation, among other things. The Ontario Court of Appeal unanimously recognized the existence of the tort; though a majority of the court held that police officers were not negligent in this particular investigation. The Supreme Court of Canada upheld that decision.

THE SUPREME COURT OF CANADA'S MAIN FINDINGS

The main findings of the Supreme Court of Canada in *Hill* are as follows:

- Police officers are not immune from liability for carrying out negligent investigations. A police officer's conduct during an investigation should be measured against the standard of how a reasonable officer in similar circumstances would have acted.

- A suspect has a critical personal interest in the conduct of an investigation, and that is sufficient to establish a duty of care owed by the investigating officers.

- The standard of care of a reasonable police officer in similar circumstances should be applied in a manner that gives due recognition to the discretion inherent in police investigations. Police officers may make minor errors or errors in judgment without breaching the standard. They will not be held to a standard of perfection.

- To be successful, the plaintiff must show that he or she suffered compensable damage caused by the officer's breach of the standard of care. Lawful pains and penalties imposed on a guilty person do not constitute compensable loss.

- The police officers' conduct in relation to Hill, considered in light of police practices at the time, met the standard of a reasonable officer in similar circumstances, even though they would not be considered good practices by today's standards.

COMMENTARY

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C&E Advice Bulletin **January 2008**

Guidance on:

1. Waiver of Statutory Limitation Periods Generally; and

2. The Limitation Period under the *Wildfire Act*

Purpose

This Bulletin provides guidance on the waiver of statutory limitation periods by clients. It also explains the unique aspects of the limitation period under the *Wildfire Act* that C&E and Protection staff need to be mindful of when conducting fire investigations or investigations associated with the *Wildfire Act* and statutory decision makers (SDMs) need to be aware of when scheduling OTBHs and writing determinations.

Background on Waiver

Limitation periods are designed to protect persons by preventing actions being taken against them after the expiry of a period of time. A person is entitled to waive this protection in some circumstances. The effect of a waiver is to permit actions against the person after the limitation period has expired.

A recent decision of the Forest Appeals Commission (the "FAC") held that SDMs can rely on waivers given in respect of the limitation period in the *Forest and Range Practices Act* ("FRPA"). There is no reason to expect that the FAC would find any differently with respect to the other statutes MFR enforces. See appeal No. 2005-FOR-009(a), *Ronald Edward Hegel and 449970 B.C. Ltd. v. Government of British Columbia* ("*Hegel*") for the FAC's full decision.

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Section 33 of the *Wildfire Act*

The *Wildfire Act* was brought into force on March 31, 2005, replacing provisions of the *Forest Practices Code of British Columbia Act* (the "*Code*"). Under the *Code*, the time limit for levying a penalty against a person was three years after the facts on which the penalty was based first came to the knowledge of an official. Under the *Wildfire Act*, the limitation period has been shortened to two years. Since this two year limitation period came into effect, there have been situations where C&E, Protection staff and SDMs have had difficulty ensuring a determination was made within the limitation period.

Section 33(1) of the *Wildfire Act* states:

Limitation period

33 (1) The period during which an order may be made under section 26 determining that a contravention occurred is **2 years** beginning on the date on which the facts that led to the order first came to the knowledge of an official.

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CEPS Bulletin 40 **December 2009**

Guidance to C&E Program staff and delegated decision makers on interpreting the words "material adverse effect" and "material adverse impact"

This bulletin is provided for the information of C&E Program Staff and delegated decision makers. While every effort has been made to ensure its accuracy, this bulletin is only intended to provide an overview. It should not be interpreted as ministry policy or legal advice, and it should ***not*** *be used in place of the Forest & Range Practices Act or its associated regulations.*

Purpose

The purpose of this bulletin is to provide guidance on interpreting the words "material adverse effect" and "material adverse impact" which are used in several regulations under the *Forest and Range Practices Act* (the *FRPA*).

Introduction

The words "material adverse effect" and "material adverse impact" are not defined in the *FRPA* or the Regulations. They are used in different contexts and relate to a variety of subject matter in the Forest Planning and Practices Regulation, the Woodlot Planning and Practices Regulation, the Range Planning and Practices Regulation, and the Government Actions Regulation.

This bulletin looks at how these words can be interpreted using two examples from the Forest Planning and Practices Regulation (FPPR), one dealing with fish passage and the other with riparian reserve zones.

The meaning of the words "adverse effect" and "adverse impact"

The word "adverse" is defined in these dictionaries to mean:

Canadian Oxford Dictionary: 2. hurtful, injurious[1]
The Dictionary of Canadian Law: unfavourable[2]
Black's Law Dictionary: 4. hostile[3]

Canadian Oxford Dictionary defines the word "effect" to mean: "1. the result or consequence of an action", and the word "impact" to mean: "2. an effect or influence, esp. when strong".[4]

Using these definitions, an "adverse effect" or "adverse impact" may be understood as something that has an injurious result or an unfavourable influence.

Several Canadian jurisdictions have defined the words "adverse effect" in environmental legislation. These definitions commonly use words such as injury, damage, harm or impairment but are not directly applicable to the *FRPA* regime.

The meaning of the word "material"

The word "material" is defined in these dictionaries to mean:

Canadian Oxford Dictionary: 4b. serious, important, of consequence[5]
The Dictionary of Canadian Law: 1. important, essential[6]
Black's Law Dictionary: 3. significant, essential[7]

Using these definitions, a "material adverse effect" or "material adverse impact" may be understood as an injurious result or unfavourable influence that may have some real, appreciable consequence.

s.13, s.15

Pages 166 through 170 redacted for the following reasons:
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[1] *The Canadian Oxford Dictionary*, Katherine Barber. (Toronto: Oxford University Press, 1998), p.18
[2] *The Dictionary of Canadian Law, 3rd. Ed.*, Daphne A. Dukelow (Toronto: Thompson Canada, 2004), p.31
[3] *Black's Law Dictionary 8th Ed.*, Brian A. Garner (St. Paul: Thompson West, 2004), p.58
[4] *Supra*, note 1, p.446 and p.708
[5] *Supra*, note 1, p.891
[6] *Supra*, note 2, p.767
[7] *Supra*, note 3, p. 998

Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 1 July 30, 1998

Forest Appeal Commission's Decision Regarding the Approval of MacMillan Bloedel's FDP for Brooks Bay/Klaskish

Introduction

On June 11, 1998 the Forest Appeals Commission (the "Commission") released its reasons for decision in Appeal No. 96/04(b), which was an appeal from a determination by the District Manager in Port McNeill, dated May 31, 1996, approving a five year Forest Development Plan ("FDP") submitted by MacMillan Bloedel Limited ("MB"). The appeal was initiated under section 131 of the *Forest Practices Code of British Columbia Act* (the "FPC Act") by the Forest Practices Board (the "Board"), which sought an order rescinding the approval of the FDP. There were several stated grounds for appeal, but the primary concerns were the alleged deficiency in the content of the FDP, and the alleged failure of MB to fulfill the public review and comment requirements. The Sierra Club of British Columbia (Sierra Club) joined the appeal as an intervenor.

> The end result was that the appeal was dismissed and the Commission did not rescind the approval of the FDP.

Decisions of the Commission do not set a precedent and are not binding on district managers or other statutory decision-makers. However, in this case, the Commission's application of some basic principles of statutory interpretation is particularly compelling, and consideration of the decision may therefore be of assistance to district managers and other statutory decision makers under the FPC Act.

In this case, the Commission dealt with the following issues:

1. What is meant by "substantial compliance" ?
2. What are the content requirements for a FDP ?
3. How is the test of "adequately manage and conserve" to be applied ?
4. What is adequate review and comment ?

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Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 2 December 04, 1998

Forest Appeals Commission's Decision Regarding Small Business Silviculture Prescriptions Fab-Co Forest Products (1989) Ltd.

Introduction

On August 27, 1998 the Forest Appeals Commission (the "Commission") released its reasons for decision in Appeal No. 97-FOR-33. This was an appeal by Fab-Co Forest Products (1989) Ltd. ("Fab-Co") from an administrative review decision which had confirmed the district manager's finding of a contravention of section 67(1)(f) of the Forest Practices *Code* of British Columbia Act (the "Act"), and slightly varied the terms of a remediation order for rehabilitation of excess soil disturbance.

> The end result of this appeal was that the district manager's determination and remediation order and the subsequent variation by the review panel were rescinded. The Ministry of Forests ("MOF") was ordered to refund any money paid by Fab-Co in respect of the remediation order.

Background

Fab-Co's logging contractor harvested the subject Small Business timber sale license area in June, 1998, after attending a pre-work meeting on May 27. The silviculture prescription ("SP"), which had been prepared by MOF staff, limited skidding to dry soil conditions, with maximum soil disturbance restricted to 10% in treatment unit ("TU") #1. The logging plan ("LP") was also prepared by MOF and reflected the soil disturbance limits in the SP, but the SP was amended by MOF to agree with the LP in authorizing skidding in June. Harvesting Inspection Reports resulting from inspections conducted by MOF staff early in the harvesting process (June 6), and after completion of harvesting (July 22 and August 7) made no mention of soil disturbance.

A soil disturbance survey conducted by the MOF on September 25 indicated a level of soil disturbance in TU #1 that was in excess of the 10% prescribed in the SP. At an opportunity to be heard on June 3, 1997, Fab-Co did not dispute the results of the soil survey, but maintained that they had followed the LP to the letter. The district manager determined that Fab-Co had contravened section 67(1)(f) of the Act, in that the 10% maximum site disturbance level specified for TU #1 was exceeded, and made a sec. 118 remediation order requiring remediation of compacted soil areas.

Fab-Co contested the determination and remediation order. The review panel concluded its findings on October 17, 1997, confirming the district manager's determination but varying the terms of the remediation order slightly to give Fab-Co the benefit of the doubt with respect to the lower limit of the confidence interval for the soil disturbance

survey. Two days before the review panel released its reasons for decision, the remediation work was completed by a contractor for MOF at a cost of $2,525.39. This amount was paid by Fab-Co on December 9, 1997.

Fab-Co appealed the findings of the review panel. The review panel proceeded with the appeal by way of written submissions, concluding in June, 1998.

The Commission dealt with the following issues:

1. Whether Fab-Co contravened section 67(1)(f) of the Act.
2. If there was a contravention, whether Fab-Co had a defence.
3. Whether MOF erred in completing the remediation order while the matter was before the administrative review.
4. Whether a finding of a contravention of section 67(1)(f), if upheld, should be dropped from Fab-Co's record.

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Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 3 February 10, 1999

The Assessment of Due Diligence In the Context of Administrative Penalty Determinations under the *Forest Practices Code of British Columbia Act*

Introduction

Any person responsible for an activity in which there is a risk of loss or damage to other persons, to property or to the environment is required to anticipate and prepare for foreseeable risks. The extent to which a person may have failed to take adequate measures to prevent a contravention from occurring, that is, the failure to exercise due diligence, must be considered by the statutory decision maker in assessing the appropriate administrative penalty for contraventions of the *Forest Practices Code of British Columbia Act* (the "FPC Act"), the *Forest Act*, the *Range Act* and the respective regulations.

The purpose of this bulletin is to assist statutory decision makers in assessing due diligence.

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Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 4 July 14, 2000

Application of Section 41(1)(b) of the *Forest Practices Code of British Columbia Act*

This bulletin replaces the previous bulletin on this topic, titled "Compliance and Enforcement Bulletin No. 4 - The Role of Public and Referral Agency Comments in the Application of Section 41(1)(b) of the Forest Practices Code of British Columbia Act", dated February 12, 1999.

Introduction

Virtually every forest development activity undertaken by a tenure-holder must first be included in an operational plan approved by a statutory decision maker ("SDM") authorized under the *Forest Practices Code of British Columbia Act* (the "FPC Act"). In most cases the SDM is a Ministry of Forests ("MOF") district manager. Section 41(1) of the Act provides that a district manager **must approve** an operational plan if:

a. *the plan... was prepared... in accordance with this Act...; and*

b. *the district manager is satisfied that the plan…will adequately manage and conserve the forest resources of the area to which it applies.*

In other words, the proposed operational plan *must* satisfy both tests before the district manager can approve it. If the proposed plan does satisfy both tests, then the district manager *must* approve it.

The first test, in section 41(1)(a), is relatively easy to apply. It requires that an operational plan must contain all the information required by the Act, and that it be submitted in accordance with the procedures set out in the Act. **Section 41(1)(b) is more difficult to apply, since it is not as expressly limited in scope as is section 41(1)(a), and it requires SDMs to struggle with a less tangible concept: "adequately manage and conserve"**.

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Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 6 August 2000

Measuring Compliance with Soil Disturbance Limits

Introduction

This bulletin has been prepared to assist district managers making determinations on exceeding soil disturbance limits.

Issue

Section 47 of the *Forest Practices Code of British Columbia Act* (Act) requires a person to not exceed the maximum soil disturbance specified in the silviculture prescription. Unless the prescription specifies otherwise, the unit of measurement under section 47 is the entire net area to be reforested (NAR). There is no legislated requirement that soil disturbance values must be specified by standards unit or for areas within a standards unit. However, the unit of measurement could be the standards unit or areas within the standards unit if specified in the prescription by the prescribing forester. Stratification down to one hectare as specified in the soil conservation surveys guidebook can only be applied to section 47 of the Act if the silviculture prescription specifies likewise.

Section 48 of the Act provides authority for the district manager to direct a person to take measures and pay costs where they have determined that an area under an operational plan has been damaged as a result of a forest practice. The ability to issue a notice under section 48 is subject to interpreting the term "damage as a result of a forest practice". Damage can be determined for any area within the cutblock as section 48 is not limited on areas or by limits specified for soil disturbance in a prescription. The person must comply with any notice under this section and it may not be reviewed or appealed except through the courts by way of a judicial review. A bulletin is currently being prepared to provide information on determining when damage has occurred.

Recommendations

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Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 7 October 31, 2000

The Forest Service and the Rule of Law: Civil Liability and the Criminal Code

Introduction

The primary function of the rule of law is to provide justice between government and citizen. Any failure on the part of the government or the public service to respect the constraints imposed on their actions by public law principles will normally invalidate these actions. For this reason, it is essential that every public official understand the public law principles that apply to their duties and responsibilities, including the principles of statutory interpretation and administrative law. In addition, in certain circumstances, failure to understand these principles may also lead to civil and, in some cases, criminal liability.

A. **Civil Liability**

Background

In early common law, the Crown was immune from all tort[1] liability. This was based on the maxim: "The King can do no wrong." The King had to be petitioned for the right to bring a tort action against the government. This eventually gave way to legislation allowing tort actions against the government, including actions based on vicarious liability for torts committed by public officials and agents of the Crown.

However, public officials themselves never shared the King's immunity; they have always been exposed to tort actions.

In Canada, the most common private law remedy for misconduct by a public official is the tort of negligence. Another private law remedy is the tort of abuse of public office. Two types of misconduct are caught by this tort. The first involves abuse of power actually possessed by a public official. The second involves conduct that is knowingly beyond the power or jurisdiction of the public official. The torts of negligence and abuse of public office are the torts most likely to form the basis of a civil action against a public official.

Issues

In many cases, a public official who acts in ***good faith*** is, by statute, granted substantial immunity from civil liability in exercising his or her statutory powers and fulfilling his or her duties: see, for example, section 142 of the *Forest Act* and section 160 of the *Forest Practices Code of British Columbia Act*[2]. However, if a public official is found to have acted in bad faith (e.g. is found to have knowingly

or carelessly abused his or her authority), then he or she can expect to lose this immunity, and to be held personally liable for any compensatory or punitive damages awarded in a civil action.

An action based on the tort of abuse of public office will, by definition, be based on an allegation of ***bad faith***, which, if proven, would expose a public official to personal liability. However, an action based on the tort of negligence will generally be based on an allegation of incompetence (e.g. an honest blunder) which, if proven, would normally not expose a public official to personal liability provided he or she was acting in good faith.

With respect to the tort of negligence, the courts have found that not every action against a public official should result in a finding of governmental liability. The courts have attempted to distinguish between policy decisions and operational functions as a means of limiting governmental liability. Policy decisions made at a ***high level*** that deal with the allocation of resources and the determination of priorities are decisions not generally subject to a finding of negligence. However, the implementation of a policy decision at an ***operational level*** may be subject to a finding of negligence.

Negligence

What is it?
The tort of negligence is made up of three core components: (1) the negligent act, (2) causation, and (3) damages. The negligent act is found when the appropriate standard of care has not been met. Causation is found when a link is established between the negligent act and the losses or damages resulting from the act. Damages are what triggers the claim for compensation and the litigation process.

A negligent act will only be found in cases where a duty of care is owed to someone, and the damages suffered are not too remote. A duty of care is owed to anyone who might reasonably be foreseen as being adversely affected by a failure to meet the requisite standard of care. Damages are not too remote if they could reasonably have been foreseen as resulting from a failure to take care.

How is it proven?
Negligence is proven if it can be demonstrated "on a balance of probabilities" that:

a. a legal obligation existed to exercise reasonable care in favour of the plaintiff (i.e. a duty of care);

b. the conduct complained of carried a risk of loss or harm that a reasonable person would contemplate and guard against (i.e. the negligent act);

c. the negligent act was the reason for the damages that were incurred (i.e. causation);

d. the damages that flowed from the negligent act could have been reasonably foreseen (i.e. not too remote); and

e. the plaintiff suffered actual loss (i.e. damages).

The standard of care imposed by the courts is that of the "reasonable person" in the circumstances of the person accused of a negligent act. It is an objective standard that ignores all the individual characteristics of the person. It focuses only on what the court believes the person ought to have done in the circumstances. Although it is not a standard of perfection, and does account for practical realities, one commentator has noted that the so-called "reasonable person" is "more alert to risk, and cautious by nature, than most of us."[3]

s.15

Abuse of Public Office

What is it?
The tort of abuse of public office involves two types of misconduct. The first is abuse of a statutory power actually possessed by a public official. This is where the power is used maliciously to injure or punish a person. The second is conduct that is beyond the power or jurisdiction of the public official. This is where the public official acts in spite of the fact that no authority exists for his or her actions, and with knowledge of - or reckless indifference to - the fact that harm to a person may result. Both types of misconduct relate to deliberate abuses of power.

How is it proven?
Abuse of public office is proven if it can be demonstrated "on a balance of probabilities" that deliberate misconduct has occurred. Canadian courts have found that deliberate misconduct can be established by proving:

12. An intentional illegal act, which includes any of the following:

    i. an intentional use of statutory authority for an improper purpose; or

    ii. actual knowledge that the act (or omission) is beyond statutory authority; or

    iii. reckless indifference or wilful blindness to the lack of statutory authority; and

13. Intent to harm an individual or a class of individuals, which includes any of the following:

    i. an actual intention to harm; or

    ii. actual knowledge that harm will result; or

    iii. reckless indifference or wilful blindness to the harm that can be foreseen to result.

It is clear that something more than mere negligence is required in order to show the existence of deliberate misconduct.

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B. **Criminal Liability**

The *Criminal Code (Canada)* is one of the most powerful embodiments of the rule of law. It represents society's strictest behavioural requirements. Two *Criminal Code* provisions are particularly relevant to Forest Service employees: obstruction of justice and breach of trust by a public official. The relevant provisions of the Criminal Code are set out in the attachment to this bulletin.

The offence of obstruction of justice is intended to preserve the integrity of the administration of justice. The offence of breach of trust by a public official is intended to ensure that public officials carry out their official duties in the public interest in accordance with the rule of law. In this regard, the Forest Service has an obligation to not only enforce the law, but also to ensure that its own activities are always conducted in accordance with the law.

Background

The Forest Service carries out inspections involving a broad range of forest and range activities and, where appropriate, investigates those activities believed to be in breach of provincial legislation or the *Criminal Code*. Investigations may result in administrative determinations and either quasi-criminal or criminal prosecutions.

With respect to prosecutions, the Forest Service has adopted a prosecution policy (16.19) that states:

> *The lead investigator's decision as to whether information and evidence gathered in an investigation supports prosecution is to be independent from management influence*.

The policy goes on to stress that:

> *Management objectives unrelated to enforcement are not relevant. The decision as to whether or not the case meets the prosecution test is to be based solely on the fact pattern of the case and is to be made by the investigating official with assistance from regional experts and other district staff as the investigating official deems appropriate*.

The prosecution policy makes it clear that the Forest Service's investigative arm must be independent. This approach recognizes the need to preserve the integrity of the investigative and prosecutorial process. The same principle underlies the *Criminal Code* prohibition against obstruction of justice. Justice cannot be served if the process it relies on is obstructed, perverted or defeated.

The Forest Service is also responsible for administering several statutes, including the *Forest Act*, *Forest Practices Code of British Columbia Act*, and *Range Act*. This responsibility demands that public officials possess a high level of dedication, integrity and a capacity for sound judgment. Consistent with that responsibility, Forest Service employees are bound by an oath of employment which reads in part:

> *I will truly and faithfully, according to my skill, ability and knowledge, execute the duties, powers and trusts placed in me as a servant of the Crown*.

This oath of employment reflects every public official's obligation to, at all times, carry out his or her official duties in the public interest. The same principle underlies the *Criminal Code* provision regarding breach of trust by a public official. This provision acknowledges that the public interest is not served if public officials derive personal benefit by the manner in which they carry out their public duties.

Obstruction of Justice

What is it?
The offence of obstruction of justice is committed by a person who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice. This offence is punishable by a term of imprisonment of up to 10 years.

How is it proven?
Obstruction of justice is proven if it can be demonstrated "beyond a reasonable doubt" that the attempt was wilful and that it was aimed at obstructing, perverting or defeating the course of justice. "Wilful" means that a specific intent must exist in the mind of the person accused of obstructing justice. In other words, the attempt must be deliberate. Attempting to "obstruct, pervert or defeat" means any act designed to accomplish this goal. The "course of justice" includes the detection and investigation of an alleged offence or administrative contravention, as well as any hearing flowing from the investigation.

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Breach of Trust by a Public Official

What is it?
The offence of breach of trust by a public official is committed when a person who is a public official (e.g. a Forest Service employee) does an act, or omits to do an act, contrary to the duty imposed upon him or her by statute, regulation, contract of employment or directive, in connection with his or her office or employment, and that act or omission either directly or indirectly gives him or her some sort of personal benefit. This offence is punishable by a term of imprisonment of up to five years.

How is it proven?
Breach of trust by a public official is proven if it can be demonstrated "beyond a reasonable doubt" that a public official knew or ought to have known that his or her conduct as a public official would constitute fraud or a breach of trust. A public official can be found guilty of this offence by committing an act or omission that is contrary to the duties imposed upon him or her and, in doing so, receives a personal benefit, either directly or indirectly. A direct personal benefit might include the receipt of money, while an indirect personal benefit might include the hope of a promotion or the desire to please a superior.

Also, in certain circumstances, even in the absence of any direct or indirect benefit to the public official, it may also be sufficient to prove that an official's conduct caused a loss or prejudice to the public or was not otherwise in the public interest.

Finally, it is sufficient to prove either that the official had knowledge of the fraud or breach of trust or that the official was reckless in relation to the circumstances that gave rise to the fraud or breach of trust. In this regard, unlike obstruction of justice, it is not necessary to prove that the action or omission in question was "wilful."

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Contact

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Attachment

Please see the attachment listing Sections 139 and 122 of the Criminal Code of Canada

[1] A "tort" means a private or civil wrong or injury for which the courts will provide a remedy in the form of an action for damages.

[2] The government may still be vicariously liable for the actions of its public officials.

[3] Philip H. Osborne, The Law of Torts (Irwin 2000).

Page 225 redacted for the following reason:
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Section 139 of the Criminal Code

Obstructing justice

139.

1. Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,

    a. by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or
    b. where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody,

    is guilty of

    c. an indictable offence and is liable to imprisonment for a term not exceeding two years, or
    d. an offence punishable on summary conviction.

2. Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

3. Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed,

    a. dissuades or attempts to dissuade a person by threats, bribes or other corrupt means from giving evidence;
    b. influences or attempts to influence by threats, bribes or other corrupt means a person in his conduct as a juror; or
    c. accepts or obtains, agrees to accept or attempts to obtain a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.

R.S.C. 1970, c. C-34, s. 127; R.S.C. 1970, c. 2 (2nd Supp.), s. 3; S.C. 1972, c. 13, s. 8.

Section 122 of the Criminal Code

Breach of trust by public officer

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

R.S.C. 1970, c. C-34, s. 111.

Forest Practices Code

Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch

Number 8 March 06, 2001

Consideration of Evidence when Making Statutory Decisions

Note: Please note that this bulletin does not constitute legal advice. Compliance and Enforcement Branch provides it as guidance for consideration by statutory decision makers. Statutory decision makers are reminded that the evaluation of evidence in any particular case up to them, and that specific circumstances must always be considered.

Introduction

British Columbia's forestry legislation makes extensive use of statutory decision makers (SDMs) for two primary reasons:

1. Forest management is a discipline that relies heavily on the site-specific application of judgment and experience.

2. For most of the specialized decisions necessary for regulating forest management on public lands, SDMs are more suitable and more efficient than the courts.

In order to make decisions which will withstand legal scrutiny, SDMs must:

- Consider and interpret the law;

- Establish the facts which are relevant to the decision;

- Apply the law to the facts to make a decision; and

- Provide a rationale for the decision.

Establishing the facts for a statutory decision is done by consideration of the evidence by the SDM. ***The purpose of this bulletin, then, is to assist SDMs to weigh the evidence before them to establish the facts necessary to make a defensible statutory decision***.

Accordingly, this bulletin is meant to apply only in the administrative remedy context and not to prosecutions. The principles identified here are useful for both approval/non-approval determinations and for contravention/penalty determinations.

The Relationship between Evidence and Facts

An SDM obviously cannot make determinations based solely on abstract legal principles - a rational and defensible decision can only be made by applying the law to the specific facts in each case. It is the SDM's role to find, or determine, the facts and those findings must be based on evidence.

Evidence is generally classified into three different forms:

1. **Oral Evidence** - also called verbal or viva voce testimony.

2. **Documentary Evidence** - evidence presented in written form, for example written statements of witnesses or suspects, affidavits, certificates, business documents, scaling records, license documents, operational plans, application forms, maps, etc.

3. **Real Evidence** - physical objects, for example "cookies" cut off a log. Photographs and sketches may be classified as real evidence or as documentary evidence.

Evidence can be further classified as direct or circumstantial:

Direct evidence goes directly to prove a fact at issue. A fact at issue, or "material fact", is one which a party must prove in order to support his or her case (see discussions below under the headings "Burden of Proof" and "Elements to be Proved".)

Circumstantial (or indirect) evidence does not, itself, prove a particular material fact - rather, it helps establish other facts from which the SDM can draw an inference or conclusion about a material fact.

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Basic Principles of Evidence

In the court system, complex rules of evidence have been developed over the centuries. Most of these rules govern the *admissibility* of the evidence - that is, will the finder of fact (either the judge or a jury) be allowed to consider a particular piece of evidence when establishing the facts in issue in the case before them. Fortunately, the rules of admissibility of evidence for SDMs are much simpler than they are for the courts - admissibility of evidence for SDMs will generally depend on whether or not the evidence is *relevant* to the decision being made.

a. **Relevance**

   Evidence is said to be relevant if it has some logical value in proving the *fact at issue* for which it is being tendered. As mentioned above in the discussion of direct evidence, a fact at issue, or "material fact", is one which a party must prove in order to support his or her case (see discussions below under the headings Burden of Proof and Elements to be Proved). The proponent of the evidence must demonstrate that, based on logic and experience, there is a rational connection between the evidence tendered and the proposition (fact) sought to be established thereby.[1]

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b. **Weight**

The SDM's findings of fact may only be based upon relevant evidence. Once evidence has been determined to be relevant, the next question is how much *weight* or value can be placed upon this evidence? Evidence that has little or no weight may still be relevant to a fact at issue before the SDM. However, once the evidence is accepted as relevant, the SDM must then evaluate it and determine how much (if any) weight should be given to it. The assessment of weight is actually an assessment of the extent to which the evidence is reliable and persuasive.[3]

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For more detail on the two-part statutory test in section 41(1) of the *Forest Practices Code of British Columbia Act* (the FPC Act), see the bulletin "Application of Section 41(1)(b) of the *Forest Practices Code of British Columbia Act*".

"Elements" Requiring Proof

For each contravention determination, there are certain material facts or "elements" that must be proved.

Primary elements are those that are common to every contravention determination. The primary elements are:

- the identity of the person suspected of the contravention;
- the time of the contravention; and
- the place the contravention occurred.

Secondary elements are those that are set out in the legislation and that are specific to the individual contravention. For example, suppose a determination is being made against a person under section 86 of the FPC Act for failure to report a fire. In order to make a finding of contravention the SDM will require evidence on each of the primary elements, and on each of the following specific secondary elements as set out in section 86:

- the person suspected of the contravention saw
- a fire
- within 1 km of a forest

- apparently unattended or burning without any precautions

- and did not immediately report.

The "primary/secondary elements" concept does not apply to approval/non-approval determinations. See the discussion of approval/non-approval determinations below under the heading "Burden of Proof".

Burden of Proof

For purposes of this bulletin, the term "burden of proof" relates to the party that has the obligation to prove a particular fact or proposition. In contravention determinations, it is the Crown that bears the burden of proving that the alleged contravention occurred, that it occurred at a time and a place that brings the matter within the jurisdiction of the SDM and that it is the person suspected of the contravention who committed the contravention. In other words, the Crown must prove the primary and secondary elements of the contravention or no finding of a contravention can be made. This "burden" arises primarily because of the *presumption* in law that "A person is innocent until proven guilty".

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Standard of Proof

What does it mean to "prove" a fact for the purpose of making a statutory decision? It does not mean proof to 100% absolute certainty. The degree of proof required for statutory decisions is known as "proof on the balance of probability" or "the preponderance of evidence". This is in contrast to the standard of proof in criminal cases, which is "proof beyond a reasonable doubt".

The difference between these two standards has been described as follows:

> "To understand these concepts better, imagine the familiar symbol of the scales of justice. Imagine that during the course of the [opportunity to be heard] the two parties [Crown and licensee] are each putting pieces of evidence in their respective sides of the scale, and that only evidence that is 'credible', or believable, has any weight. At the end of the [opportunity to be heard], the [SDM] looks at the scales. If the party who had the burden of proof [the Crown] has put enough "weighty" evidence into the dish on its side to tip that side down, it will

> have furnished a 'preponderance' - the greater weight - of the evidence, and [the contravention will be proven].
>
> But in a criminal case, the prosecutor must have more than a preponderance. He must tip the scales so far down that there is not enough weight in [the defendant's] side to create even a [reasonable] doubt …about [the defendant's] guilt. Then [the defendant] can be convicted. Criminal lawyers like to think of a preponderance of the evidence as being 51 percent or more of the weight of the evidence produced at trial. No one has ever put a figure on the percentage of the weight needed to satisfy the 'reasonable doubt' standard, but it is generally agreed that it is far more than 51 percent, a much more difficult burden.[5]"

As one judge described it:

> "[The standard for balance of probability] is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the [SDM] can say: '[I] think it more probable than not,' the burden is discharged, but if the probabilities are equal, it is not.[6]"

s.15, s.13

Pages 233 through 236 redacted for the following reasons:
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s.13, s.15

Forest Practices Code
Advice to Statutory Decision Makers and Their Staff from Compliance & Enforcement Branch
Number 8 March 06, 2001

Officially Induced Error

The Forest Appeals Commission ("FAC") has determined that officially induced error is available as a defence under the administrative remedies regime of the Forest Practices Code of British Columbia Act (the "Code"), in the same way that it would be available for prosecutions of strict liability offences.

What Is Officially Induced Error?

Officially induced error of law exists as an exception to the rule that "ignorance of the law is no excuse". It arises in situations where a person makes inquiries of an official regarding the legality of an intended course of action, and relies in good faith on erroneous advice provided by the official. The policy rationale for this exception is that the complexity of contemporary regulation makes it unreasonable to expect a responsible citizen to have a complete knowledge of the law, and it would be unjust for the government to prosecute an individual for a contravention which it had already assured him, through one of its officials, was not a contravention.

The elements of the defence are as follows:

- The defendant must be (or become) mistaken as to the law after inquiry, not merely ignorant of the law.
- The defendant must seek advice from an official, who will usually be a member of a government or a government agency.
- The official must be one who is involved in the administration of the law in question.
- The official must give erroneous advice.
- The erroneous advice must be apparently reasonable.
- The error of law must arise because of the erroneous advice.
- The defendant must be innocently misled by the erroneous advice, that is, he or she must act in good faith and without reason to believe that the advice is indeed erroneous.
- The defendant's error in law must be apparently reasonable.
- The defendant, when seeking the advice of the official, must act in good faith and must take reasonable care to give accurate information to the official whose advice he solicits.

A summary of a recent Supreme Court of Canada decision in R. v. Jorgenson, [1995] 4 S.C.R. 55, described it this way:

> *"In order for an accused to rely on an officially induced error of law as an excuse, he must show, after establishing he made an error of law (or of mixed law and fact), that he considered his legal position, consulted an appropriate official, obtained reasonable advice and relied on that advice in his actions. When considering the legal consequences of his actions, it is insufficient for an accused who wishes to benefit from this excuse to simply have assumed that his conduct was permissible. The advice came from an appropriate official if that official was one whom a reasonable individual in the position of the accused would normally consider responsible for advice about the particular law in question. If an appropriate official is consulted, the advice obtained will generally be presumed to be reasonable unless it appears on its face to be utterly unreasonable. The advice relied on by the accused must also have been erroneous, but this fact does not need to be demonstrated by the accused. Reliance on the official advice can be shown by proving that the advice was obtained before the actions in question were commenced and by showing that the questions posed to the official were specifically tailored to the accused's situation."*

The Ontario Court of Appeal in R. v. Camcoil Thermal Corporation and Parkinson (1986), 27 C.C.C. (3d) 295 (Ont. C.A.) stated that:

> *"The defence of 'officially induced error' is available as a defence to an alleged violation of a regulatory statute where an accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. In order for the accused to successfully raise this defence, he must show that he relied on the erroneous legal opinion of the official and that his reliance was reasonable. The reasonableness will depend on several factors including the efforts he made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave him the advice, and the clarity, definitiveness and reasonableness of the advice given."*

The FAC has decided that the defence of officially induced error applies to the administrative remedies regime under the Code. All elements of the defence must be made out before it can be successful. An officially induced error of law defence will only be successful in the clearest of cases. The onus is on the accused to establish the defence on the balance of probabilities. Where the defence is successfully made, the proper result is that a contravention is considered not to have occurred.

Pages 239 through 241 redacted for the following reasons:
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s.13, s.15

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C&E Branch Advice Bulletins
Compliance & Enforcement Intranet

Number 10 **July 31, 2001**

Silviculture security requirements for Non-Replaceable Forest Licences

Purpose

The purpose of this bulletin is to outline the legislative framework that governs how Regional Managers (RMs) and District Managers (DMs) make determinations respecting the requirements for silviculture security for non-replaceable forest licences. It also provides advice to these statutory decision-makers that will assist them in exercising their broad statutory discretion.

Introduction

The goal of any security is to protect the government's interest. The requirement for security – and its form and amount – should be based on what is necessary to protect whatever interest is at risk. Criteria such as amount, timing and form will vary depending on the potential harm that could occur (i.e. the financial cost to government if it has to rely on the security)

Legislative Base

Section 70 of the *Forest Practices Code of British Columbia Act (*the FPC of BC Act*)* requires the holders of major licences (which, by definition, includes non-replaceable forest licences) to reforest harvested areas in accordance with the terms of their approved silviculture prescriptions.

In particular, unless they elect to request the Crown to assume the prescription obligations under section 71(2) of the FPC of BC Act, the holders of non-replaceable forest licences (NRFLs) bear full financial responsibility for the establishment of the free growing crop.

The Security for Forest Practice Liabilities Regulation (the SFPL Regulation) under the FPC of BC Act states the RM or DM **may**, in a notice given the holder of a NRFL (or any other major licence or woodlot licence that is not replaceable), require the holder to provide security of any kind, including money, for the performance of the holder's duty to carry out their obligations under a silviculture prescription. In their role as statutory decision makers, RMs and DMs are given broad discretion in deciding whether and how to require such security.

Pages 244 through 245 redacted for the following reasons:
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Forest Practices Code

Compliance and Enforcement Branch Advice to Statutory Decision Makers and their Staff

Number 11 **October XX, 2001**

Functus Officio

The Need for Finality in Determinations

Introduction

Functus officio is a common law rule that prohibits a statutory decision-maker (SDM) from changing a determination once it has been rendered.

This bulletin explains the functus rule and illustrates how it can apply in different situations. The statements made in this bulletin are accurate, however, different conclusions about how the rule applies can be reached depending on the particular facts of each situation. Accordingly, legal advice should be sought from Ministry of Attorney General solicitors if the issue arises to ensure that all of the particular factual circumstances are considered.

How the Rule Works

Once a validly-made final determination has been issued (either orally or in writing), the SDM is powerless to change it, other than to correct obvious technical or clerical errors, or unless specifically authorised to do so by statute or regulation.

Technical and Clerical Errors

A technical or clerical correction is one that does not change the substance or outcome of the decision. Correcting technical or clerical errors does not include situations where the SDM has changed his or her mind about an issue, made an error within his or her jurisdiction, or where there has been a change in circumstances that would seem to justify a new decision.

Jurisdictional Errors

Jurisdictional errors are errors that relate to an SDM's authority to make a decision, such as where the SDM incorrectly interprets the law and consequently oversteps his or her authority. An error made within the SDM's jurisdiction cannot be reopened. However, a decision that is based on a jurisdictional error (i.e. made outside the boundaries of the SDM's authority) can be revisited by the SDM and should be considered a nullity. In that instance, a determination has not really been made, because the SDM has acted beyond his or her authority, i.e. there has not been a validly made decision.

Finality in Decision-making

The functus rule exists to provide finality to quasi-judicial decisions so that people and businesses are afforded the certainty they require to operate effectively. The ability to revisit and change determinations could easily disrupt the lives and businesses of those affected by the determinations, and cause them hardship and loss. The rule is premised on the idea that, overall, the advantages of avoiding uncertainty (and its consequences) outweigh the reasons a SDM might have for wanting to change a determination in a particular case.

This point was made by Mr. Justice Thackray in Doyle v. HMTQ and Bell Pole Company Ltd., [1993] (BCSC), where the petitioner (Doyle) sought to overturn a ministerial consent decision involving a tenure transfer under s.54 of the Forest Act.

Under s. 56 of the Forest Act, a minister's consent obtained under s.54 results in an automatic five percent reduction in the licence's allowable annual cut. Bell Pole had sought and obtained the ministerial consent decision on behalf of Mr. Doyle in anticipation of its purchase of Mr. Doyle's licence. When the sale to Bell Pole fell through, Mr. Doyle discovered, to his dismay, that his licence was still subject to the five percent reduction, despite the fact that the transfer had not occurred.

Mr. Doyle asked the Minister to revisit and rescind his s.54 decision. However, because the Minister's decision was a valid, final decision, the Minister did not have the authority to re-open it. He was functus. Mr. Doyle then petitioned the court to have the s.54 decision changed.

In his oral reasons for judgment on judicial review, Mr. Justice Thackray said:

> *I think the Minister was correct. People in the position of Mr. Doyle or Bell Pole would be ill served if there was a general pronouncement here that a Minister could come along, after the consent [decision], and change his mind and declare the consent a nullity. In the long run that is the last thing that Doyle and Bell Pole would want.*

When is a decision "final"?

Functus officio only comes into play after a final decision has been rendered. It does not preclude a decision-maker from re-opening a hearing to hear more evidence or submissions, or from seeking further written submissions from parties prior to making a decision. However, in order to ensure that a determination can, in fact, be considered final, a SDM cannot reserve the right to clarify or revise the determination at a later date. To do so would raise doubts as to whether or not a determination was, in fact, made.

Two Examples

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Forest Practices Code

Compliance and Enforcement Branch Advice to Statutory Decision Makers and their Staff

Number 12 **October 05, 2001**

Challenges to the jurisdiction of senior officials and reviewers by persons claiming aboriginal rights or title

Purpose

This bulletin is intended to clarify the authority of senior officials and reviewers to exercise their statutory powers to make or review determinations under the *Forest Practices Code of British Columbia Act* (the Code) when this authority is challenged by a person claiming aboriginal rights or title.

Background

Thomas Paul, a member of the Ahousaht First Nations, argued at his Forest Appeals Commission hearing that the Commission did not have the jurisdiction to adjudicate his appeal because he was claiming an aboriginal right to cut timber. The Commission ruled that it has the jurisdiction to adjudicate all issues before it including aboriginal rights and title. The B.C. Supreme Court upheld the Commission's ruling and Mr. Paul appealed to the B.C. Court of Appeal.

The Court of Appeal released its decision on June 14, 2001. The Court found, among other things, that the Code does not empower the Forest Appeals Commission to adjudicate claims of aboriginal rights or title.

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Business Solutions Branch **May 23, 2003**
Compliance & Enforcement Branch

Assessing "Reasonable Mistake of Fact" as a Defence

INTRODUCTION

Section 72(a) of the *Forest and Range Practices Act* (FRPA) provides for the defence of " reasonable mistake of fact" to an alleged contravention of the FRPA, its regulations and standards, and to alleged contraventions of the *Forest Practices Code of British Columbia Act* (the Code), the *Forest Act*, the *Range Act* and regulations made under those acts. The FRPA is not in force as of this writing; however, transition provisions that provide for the defence have been in force since December 17, 2002. [† see box below]

Under this legislation, a determination of a contravention cannot be made against an alleged contravener who establishes to the statutory decision-maker (SDM) that he or she reasonably believed in the existence of facts that, if true, would establish that he or she did not contravene the legislation. Even though the alleged contravener at the opportunity to be heard may not specifically use the words " reasonable mistake of fact", all relevant evidence that is presented by the alleged contravener that supports the defence must be considered by the SDM.

The burden is on the alleged contravener to prove on a balance of probabilities the elements of "reasonable mistake of fact".

†NOTE: The transition provisions (Bill 75) came into force on December 17, 2002. Bill 75 introduced the defences of due diligence, mistake of fact, and officially induced error for alleged contraventions of <u>the Code only</u>, not for alleged contraventions of the *Forest Act* or the *Range Act*.

Once the FRPA comes into force, these defences will be available for alleged contraventions of all three statutes, pursuant to section 72 of the FRPA.

Note further that in both the transition period and once the FRPA comes into force, these defences are available to persons for contravention determinations made on or after December 17, 2002, even if the alleged contravention occurred *prior to* December 17.

The relevant legislative provisions are reproduced in Appendix A, for convenience. Appendix A also has an authority matrix to help you understand the application of the provisions.

What is a Reasonable Mistake of Fact?

A reasonable mistake of fact is a reasonable mistake about the existence of a circumstance or set of circumstances which, if true, would establish that an alleged contravener did not contravene the law.

Elements of "Reasonable Mistake of Fact"

The defence of "reasonable mistake of fact" will succeed if:

(a) the mistake was a mistake of fact;
(b) the mistake was reasonable; and
(c) had the mistaken fact been true, there would have been no contravention.

What is reasonable is not what the alleged contravener believed to be reasonable. Rather, a reasonable belief is one that a person exercising all reasonable care would likely have held in those same circumstances.

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Conclusion

If the elements of a contravention are established by the Crown, the burden of establishing the defence of "reasonable mistake of fact" is on the alleged contravener. The defence will be successful if the alleged contravener reasonably believed in a mistaken circumstance or set of circumstances which, if true, would establish that the person did not contravene the law.

To determine reasonableness of belief, the SDM needs to consider the belief that a reasonable person would likely have held in those same circumstances. The burden of establishing the defence is on the alleged contravener on a balance of probabilities. If an alleged contravener establishes the defence of "reasonable mistake of fact", that person cannot be found in contravention of the legislation.

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This bulletin does not constitute legal advice. It is offered as guidance only by the Business Solutions Branch and the Compliance & Enforcement Branch for consideration by Ministry of Forests staff.

For questions regarding this bulletin,

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APPENDIX A

LEGISLATIVE AUTHORITY

ADMINISTRATIVE CONTRAVENTIONS

Section 119 of the Code was amended by Bill 75 on December 17, 2002, to provide for the defences of due diligence, mistake of fact, and officially induced error for alleged contraventions of the Code. Section 119.1(1) is the legislative authority for these defences during the transition period, prior to the enactment of the FRPA.

> **119.1** (1) For the purposes of a determination of a senior official under section 117, 118 or 119, no person may be found to have contravened a provision of this Act, the regulations, the standards or an operational plan if the person establishes that
>
> (a) the person exercised due diligence to prevent the contravention,
>
> (b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or
>
> (c) the person's actions relevant to the provision were the result of an officially induced error.
>
> (2) Subsection (1) does not apply in respect of a determination made under section 117, 118 or 119 before the coming into force of this subsection.

Section 119.1(2) of the transition provisions (directly above) means that these defences are not available on the review or appeal of determinations made before December 17, 2002. There is no similar provision in the FRPA.

Once the FRPA comes into force, the sections below (found in Part 6 of the FRPA) will provide the legislative authority for the making of contravention determinations and the legislative requirement to consider the defences of due diligence, mistake of fact, and officially induced error.

Forest and Range Practises Act

> **59(1)** In this Part, "the Acts" means one or more of this Act, the regulations or the standards or the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Range Act* or a regulation made under the *Forest Practices Code of British Columbia Act*, the *Forest Act* or the *Range Act*.
>
> **71(1)** The minister, after giving a person who is alleged to have contravened a provision of the Acts an opportunity to be heard, may determine whether the person has contravened the Acts.

> **72** For the purposes of a determination of the minister under section 51 (7), 54 (2), 57 (4), 71 or 74, no person may be found to have contravened a provision of the Acts if the person establishes that the
>
> > (a) person exercised due diligence to prevent the contravention,
> >
> > (b) person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or
> >
> > (c) person's actions relevant to the provision were the result of an officially induced error.

OFFENCES

Bill 75 amended section 157 of the Code by adding the defences of mistake of fact and officially induced error to the already recognized defence of due diligence, for alleged offences under the Code. Section 157.1 is the legislative authority for these defences during the transition period, prior to the enactment of the FRPA.

> **157.1** Due diligence, mistake of fact and officially induced error are defences to a prosecution under this Act.

Once the FRPA is enacted, the same provision will appear in the FRPA as section 101:

> **101** Due diligence, mistake of fact and officially induced error are defences to a prosecution under this Act.

Note that although the defences are expressed differently for administrative contraventions and offences, the elements of the defences are the same.

Information regarding legal authorities for the defences is reproduced in a matrix on the next page.

AUTHORITIES FOR APPLICATION OF DEFENCES

THIS MATRIX INDICATES THE SOURCE OF AUTHORITY FOR EACH OF THE DEFENCES DURING TRANSITION AND AFTER ENACTMENT OF THE FRPA IN RELATION TO THE CODE, THE *FOREST ACT* AND THE *RANGE ACT*. NOTE THAT AFTER ENACTMENT OF THE FRPA, THE FRPA REPLACES THE CODE.

ADMINISTRATIVE CONTRAVENTIONS				
		CODE	***FOREST ACT***	***RANGE ACT***
During Transition	Due Diligence	s.119.1	Common Law	Common Law
	Mistake of Fact	s.119.1	Common Law	Common Law
	Off. Induced Error	s.119.1	Common Law	Common Law
FRPA				
Once FRPA is enacted	Due Diligence	s.72*	s.72	s.72
	Mistake of Fact	s.72	s.72	s.72
	Off. Induced Error	s.72	s.72	s.72
OFFENCES				
		CODE	***FOREST ACT***	***RANGE ACT***
During Transition	Due Diligence	s.157.1	Common Law	Common Law
	Mistake of Fact	s.157.1	Common Law	Common Law
	Off. Induced Error	s.157.1	Common Law	Common Law
FRPA				
Once FRPA is enacted	Due Diligence	s.101	Common Law	Common Law
	Mistake of Fact	s.101	Common Law	Common Law
	Off. Induced Error	s.101	Common Law	Common Law

*Note that section 72 of the FRPA applies to alleged contraventions of the FRPA, its regulations and standards, and to alleged contraventions of the Code, the *Forest Act*, the *Range Act* and the regulations (but not standards) made under those acts.

BSB and C&E Advice Bulletin #14 **April, 2003**

ASSESSING DUE DILIGENCE AS A DEFENCE

INTRODUCTION

Section 72(a) of the *Forest and Range Practices Act* (FRPA) provides for the defence of due diligence to an alleged contravention of the FRPA, its regulations and standards, and to alleged contraventions of the *Forest Practices Code of British Columbia Act* (the Code), the *Forest Act*, the *Range Act* and regulations made under those acts. The FRPA is not in force as of this writing; however, transition provisions that provide for the defence have been in force since December 17, 2002. [† see box on next page]

Under this legislation, a determination of contravention cannot be made against a person who establishes to the statutory decision-maker (SDM) that he or she exercised due diligence. In other words, blame will not be placed on a person who took all reasonable care to avoid committing the prohibited act. Even though the alleged contravener, at the opportunity to be heard, may not specifically use the words “due diligence”, all relevant evidence that supports the defence must be considered by the SDM.

The burden is on the alleged contravener to prove on a balance of probabilities that he or she exercised due diligence.

QUANTUM V. LIABILITY

Prior to the FRPA and the transition provisions, SDMs had to consider several due diligence-like factors when determining the size (quantum) of monetary penalty — after they had made their finding of liability. Under the new legislation, these factors (set out in s.117(4)(b) of the Code and section 71(5) of the FRPA) must still be considered in determining quantum, however, a more in-depth due diligence analysis must now be undertaken with respect to liability itself. The focus of this bulletin is on the due diligence analysis as it relates to liability.

It should be noted that although the determination of quantum will continue to be carried out in accordance with the factors set out in sections 117(4)(b) and 71(5), findings made in the context of the liability analysis may understandably also have an impact on the determination of quantum.

†NOTE: The transition provisions (Bill 75) came into force on December 17, 2002. Bill 75 introduced the defences of due diligence, mistake of fact, and officially induced error for alleged contraventions of the Code only, not for alleged contraventions of the *Forest Act* or the *Range Act*.

Once the FRPA comes into force, these defences will be available for alleged contraventions of all three statutes, pursuant to section 72 of the FRPA.

Note further that in both the transition period and once the FRPA comes into force, these defences are available to persons for contravention determinations made on or after December 17, 2002, even if the alleged contravention occurred *prior to* December 17.

✪✪✪

The relevant legislative provisions are reproduced in Appendix A, for convenience. Appendix A also has an authority matrix to help you understand the application of the provisions.

WHAT IS DUE DILIGENCE?

Due diligence refers to the amount of care that a person is required to take in any given situation. For the defence of due diligence to apply, an alleged contravener must have taken all reasonable care to avoid committing the prohibited act.

This involves a consideration of what a reasonable person would have done in the particular circumstances. Each situation must be evaluated in light of its own particular facts.

THE ELEMENTS OF DUE DILIGENCE

Although the law in this area can be somewhat complex, due diligence essentially consists of two basic elements or tests—"reasonable forseeability" and "reasonable care".

People can only be expected to take preventive action to avoid harmful events arising from their activities that can be reasonably foreseen. If a harmful event is reasonably foreseeable, then a duty arises to take reasonable care to prevent the event from occurring.

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CONCLUSION

The key to assessing due diligence is "What was reasonable considering all the circumstances?" As one judge put it:

> "Reasonable care and due diligence do not mean superhuman efforts. They mean a high standard of awareness and decisive, prompt, and continuing action. To demand more would, in my view, move a strict liability [standard] dangerously close to one of absolute liability."

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SDMs and C&E staff should not hesitate to call for assistance where necessary.

***Note*: This bulletin does not constitute legal advice. It is offered as guidance only by the Business Solutions and Compliance & Enforcement Branches for consideration by SDMs and C&E staff.**

CONTACTS

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> **119.1** (1) For the purposes of a determination of a senior official under section 117, 118 or 119, no person may be found to have contravened a provision of this Act, the regulations, the standards or an operational plan if the person establishes that
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Once the FRPA comes into force, the sections below (found in Part 6 of the FRPA) will provide the legislative authority for the making of contravention determinations and the legislative requirement to consider the defences of due diligence, mistake of fact, and officially induced error.

Forest and Range Practises Act

> **59(1)** In this Part, "the Acts" means one or more of this Act, the regulations or the standards or the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Range Act* or a regulation made under the *Forest Practices Code of British Columbia Act*, the *Forest Act* or the *Range Act*.

71(1) The minister, after giving a person who is alleged to have contravened a provision of the Acts an opportunity to be heard, may determine whether the person has contravened the Acts.

72 For the purposes of a determination of the minister under section 51 (7), 54 (2), 57 (4), 71 or 74, no person may be found to have contravened a provision of the Acts if the person establishes that the

(a) person exercised due diligence to prevent the contravention,

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157.1 Due diligence, mistake of fact and officially induced error are defences to a prosecution under this Act.

Once the FRPA is in force, the same provision will appear in the FRPA as section 101**:**

101 Due diligence, mistake of fact and officially induced error are defences to a prosecution under this Act.

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THIS MATRIX INDICATES THE SOURCE OF AUTHORITY FOR EACH OF THE DEFENCES DURING TRANSITION AND AFTER THE FRPA COMES INTO FORCE, IN RELATION TO THE CODE, THE *FOREST ACT* AND THE *RANGE ACT*. NOTE THAT AFTER THE FRPA COMES INTO FORCE, IT REPLACES THE CODE.

ADMINISTRATIVE CONTRAVENTIONS				
		CODE	***FOREST ACT***	***RANGE ACT***
During Transition	Due Diligence	s.119.1	Common Law	Common Law
	Mistake of Fact	s.119.1	Common Law	Common Law
	Off. Induced Error	s.119.1	Common Law	Common Law
FRPA				
Once FRPA is in force	Due Diligence	s.72†	s.72	s.72
	Mistake of Fact	s.72	s.72	s.72
	Off. Induced Error	s.72	s.72	s.72
OFFENCES				
		CODE	***FOREST ACT***	***RANGE ACT***
During Transition	Due Diligence	s.157.1	Common Law	Common Law
	Mistake of Fact	s.157.1	Common Law	Common Law
	Off. Induced Error	s.157.1	Common Law	Common Law
FRPA				
Once FRPA is in force	Due Diligence	s.101	Common Law‡	Common Law‡
	Mistake of Fact	s.101	Common Law	Common Law
	Off. Induced Error	s.101	Common Law	Common Law

†Note that section 72 of the FRPA applies to alleged contraventions of the FRPA, its regulations and standards, and to alleged contraventions of the Code, the *Forest Act*, the *Range Act* and their regulations but to not their standards.

‡ All three defences will be available in upcoming amendments to the *Forest Act* and *Range Act*.

APPENDIX B

TWO GENERAL PRINCIPLES

Although assessments of due diligence must be done on a case-by-case basis, two general principles apply in virtually every case:

1. **The greater the likelihood of a harmful event occurring, generally the higher the duty of care.**

This just makes sense. If harm is very likely, then more must be done to prevent it. Assessment of the likelihood of a harmful event occurring is based on what might reasonably be predicted through a risk analysis done by a person knowledgeable in the operational practices involved.

Factors that may affect the likelihood of a harmful event occurring include, but are not limited to:

- the nature of the activity;
- the inherent risks in the activity or in the machinery or materials used;
- the size of the operation;
- the remoteness of the site;
- the seasonal or climatic conditions;
- the terrain;
- the past performance or experience of the operator; and
- the nature or sensitivity of the environment.

2. **The greater the potential damage, the greater the degree of care required.**

This also makes good sense. If the potential harm is very great, then more must be done to prevent it. Factors to consider in assessing the magnitude of harm include, but are not limited to:

- the potential for personal injury or death;
- the presence of an important value or resource - for example a fish stream or a rare or endangered species;
- the potential for property damage or economic loss;
- the long-term effects of the damage; and
- whether the damage can be repaired or mitigated.
- the nature or sensitivity of the environment.

C&E Advice Bulletin 15 December 5th, 2005

RECORDING AN OPPORTUNITY TO BE HEARD [OTBH]

Purpose

The purpose of this bulletin is to provide guidance on the recording of OTBHs, the obligation to produce recordings and the making of transcripts.

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Pages 276 through 277 redacted for the following reasons:
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C&E Advice Bulletin 16 December 8th, 2005

CONFLICT OF INTEREST GUIDELINES FOR STATUTORY DECISION–MAKERS

Purpose

The purpose of this bulletin is to provide Ministry of Forests and Range staff and, in particular, those with authority to make administrative quasi-judicial determinations, with guidance on how to recognize and manage conflict of interest situations.

What's a Conflict of Interest?

A conflict of interest is a situation in which a decision-maker has a competing interest, sufficient to influence or appear to influence his or her impartial exercise of discretion. In other words, it's a situation of real or perceived bias.

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Pages 279 through 281 redacted for the following reasons:
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C&E Advice Bulletin **September 2007**

Due Diligence Defence Update

INTRODUCTION

The defence of due diligence has been available since November 2003 to persons found to have contravened the *Forest Practices Code of British Columbia Act* (the "*Code*") or the *Forest and Range Practices Act*, and since March 2005 to persons found to have contravened the *Wildfire Act*. Two recent decisions of the Forest Appeals Commission have considered the defence in detail. The decisions are *Weyerhaeuser*[1], released January 2006, and *Pope & Talbot*[2], released September 2007. They provide valuable insights into the nature of the defence. This bulletin, intended to supplement an earlier bulletin dealing with the defence[3], highlights the Commission's main findings and comments on their significance to C&E staff and delegated decision makers (DDMs).

BACKGROUND

1. The *Weyerhaeuser* decision

Weyerhaeuser appealed a determination by a DDM that it contravened section 96(1) of the *Code* by harvesting Crown timber without authority. The DDM levied a penalty of $2,012.

Weyerhaeuser claimed that the event was not reasonably foreseeable or, if it was, that it took all reasonable care to prevent the event from occurring by engaging a contractor to perform work on its behalf. The Commission found that Weyerhaeuser was duly diligent because the event was not reasonably foreseeable.

The majority found that, while it is generally foreseeable that a machine operator working in the bush in winter may be disoriented, it was not foreseeable that the company's specific instruction to the sub-contractor's foreman to walk the area with the machine operator would be ignored or that the operator would misread the map. The minority of the Commission found that the event was foreseeable and that the company had not done enough to prevent it from occurring.

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[1] *Weyerhaeuser Company Limited v. Government of British Columbia (Forest Practices Board, Third Party, Sierra Club of Canada, Council of Forest Industries, Intervenors)*, (January 17, 2006, appeal no. 2004-FOR-005(b))
[2] *Pope & Talbot v. Government of British Columbia (Council of Forest Industries, Intervenor)*, (September 4, 2007, appeal no. 2005-004(b)); The decision is currently under appeal to the Supreme Court of B.C.
[3] DDM Bulletin #14 *Assessing Due Diligence as a Defence*, dated April 2003 and found on the C&E Branch website.

2. The *Pope & Talbot* decision

Pope & Talbot appealed a determination by a DDM that it had contravened section 67(1) of the *Code* by cutting trees contrary to the silviculture prescription (the "SP"). The DDM also found that the harvesting contractor and the falling sub-contractor had contravened section 67(1). The DDM levied a total penalty of $1,000, which was apportioned 60% to Pope & Talbot and 40% to the harvesting contractor. Only Pope & Talbot appealed the determination.

The company did not dispute that its sub-contractor cut trees in contravention of the SP, but claimed that it was duly diligent, and the error was entirely the responsibility of the harvesting contractor and sub-contractor. The Commission found that Pope & Talbot was not duly diligent because the company did not take all reasonable care to prevent the event from occurring.

The Commission found that Pope & Talbot's "directing minds" should have foreseen the event and taken reasonable steps to avoid it. They found the company was not duly diligent because their Environmental Management System ("EMS") did not adequately address the complexity of the SP and the higher risks involved. The Commission also found that the company's contractors should have been supervised more closely and more attention should have been paid to leave tree boundaries.

THE COMMISSION'S MAIN FINDINGS

The main findings of the Commission in the *Weyerhaeuser* and *Pope & Talbot* decisions are as follows:

- A person will be vicariously liable for the contraventions of their contractor, employee or agent unless the person is able to prove that they were duly diligent.

- It is only the due diligence of the person found to have contravened that needs to be proven for a successful defence to be established. The due diligence of the others involved does not need to be proven.

- A person will have a defence of due diligence if the person proves that the particular event that led to the contravention was not reasonably foreseeable. Only if the event was reasonably foreseeable is the evidence that the person took all reasonable care to prevent the contravention relevant.

- When a person engages a contractor whose acts or omissions result in a contravention, for the person to establish a defence of due diligence they must demonstrate that:

    (a) the act took place without the person's direction or approval; and
    (b) the person exercised all reasonable care by taking all reasonable steps to ensure that the contravention did not occur.

- The standard to be applied is that of a reasonable person in the particular circumstances of the particular case, and will be shaped by the following factors:

  (a) gravity of the potential harm,
  (b) the available alternatives to protect against the harm,
  (c) the skill required, and
  (d) the extent the person could control the causal elements of the contravention.

- A company must prove due diligence by demonstrating that those who are the "directing minds" of the company were duly diligent.

- The "directing minds" are usually one or more of the company's directors or officers but may include managing directors, superintendents or anyone else to whom the directors have delegated responsibility for developing and overseeing the implementation of policies and procedures designed to ensure regulatory compliance.

- A company (through its "directing minds") has an overarching responsibility to manage their operations so that contraventions do not occur.

- Blind and unquestioning reliance on an EMS by the "directing minds" of a company may not be enough to prove due diligence if the EMS does not adequately address the potential environmental harm that can arise.

- A company cannot rely on the due diligence of a lower level employee to prove that the company was duly diligent. The employee may have followed the EMS, but if the EMS is inadequate, the company may not be duly diligent.

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Administrative Bulletin

Number 01 **October 31, 1995**

Guide To Administering Logging Plans

This guide is provided for the information of Forest Service staff primarily district managers. While every effort has been made to ensure accuracy, this guide is only intended to provide an overview of the administrative requirements pertaining to logging plans. It should ***not*** *be interpreted as ministry policy or legal advice, and it should* ***not*** *be used in place of the Forest Practices Code of British Columbia Act, the Forest Act, or their associated regulations.*

Introduction

This guide provides information respecting logging plan (LP) administration under the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*. It focuses on LP administration during the two-year transition period, i.e. the first six months (the cutblock and road review period) and the next 18 months (the substantial compliance period). The guide also identifies the administrative intricacies of LPs that were approved prior to June 15, 1995 (grandparented LPs) and LPs that extend beyond June 15, 1997.

Background

The purpose of the LP is to provide a detailed description on how the specifications in a forest development plan (FDP) and silviculture prescription (SP) will be carried out on a cutblock.

All forest practice provisions of the Act became effective on June 15, 1995. However, many of the code's forest practice requirements are implemented through the operational plans. Therefore, grandparented operational plans, or operational plans approved in the first six-month period, will not necessarily meet all of the code's requirements. Section 228.1 of the Act provides that during the two-year transition period, the provisions stipulated in the operational plans prevail, but after June 15, 1997, the provisions stipulated in the Act prevail.

LP administration is governed under the following sections of the Act, regulations and guidebook:

- Act:
    - Section 8 standards for operational plans and forest practices
    - Section 11 content
    - Section 17(1) general planning requirements
    - Section 20 general requirement for the Small Business Forest Enterprise Program (SBFEP)
    - Section 21 general requirement other licenses
    - Section 29 exemptions
    - Section 33 limitation on exemptions
    - Section 34 voluntary amendments
    - Section 35 amendment or replacement if the plan is unlikely to succeed
    - Section 39 review and comment
    - Section 40 giving effect to LPs prepared by the district manager
    - Section 41 approval by the district manager or designated environment official
    - Section 42 approval in emergency cases
    - Section 43(1) approval of minor changes by the district manager or someone authorized by the district manager
    - Section 68(1) excavated or bladed trails
    - Section 224 grandparented plans
    - Section 225(5) and (6) amending operational plans prepared by major/woodlot licensees
    - Section 226(5), (6) and (7) amending operational plans prepared by government
    - Section 228 amendments to grandparented plans
    - Section 228.1 operational plans prevail
    - Section 230 logging plans approved in the first six month period

    - Section 238 cutting permits

- Regulations:
    - Operational Planning, Sections: 6, 11, 12, and Part 4
    - Timber Harvesting Practices
    - Cutblock and Road Review
    - Forest Road
    - Administrative Remedies

- Guidebook: *Logging Plan Guidebook*.

Authorizing a Designated Forest Official

Section 1(6) of the Act provides district managers with broad powers to authorize a designated forest official to act on his or her behalf with respect to logging plans under the Act or regulations.

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Linkages to the **Forest Act** *and the Act*

While the *Forest Act* provides the authority to harvest timber, the Act (Section 20 and 21) requires the approval of a LP before any harvesting operations can occur.

Term of a Logging Plan

LPs approved prior to June 15, 1995, are grandparented operational plans (Section 224). The term of a grandparented LP is until the first of the following occurs:

- the agreement for which the plan was prepared expires and is not replaced or is canceled, surrendered or otherwise terminated
- the forest practices required on the area under the plan are completed to the satisfaction of the district manager, or
- the plan is replaced with a LP prepared in accordance with the Act.

LPs approved after June 15, 1995, will expire after all of the requirements specified in the plan have been completed to the satisfaction of the district manager (the last requirement

generally will be the deactivation of the roads on the cutblock). As the LP and cutting authority are separate entities, LP obligations (other than those related specifically to the harvesting of timber) will remain after the cutting authority has expired.

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Tenure Holders that Require Logging Plans

Under Sections 20 and 21 of the Act, the holders of following tenures must have an approved LP before harvesting a cutblock:

- timber sale licence (TSL) that is not a major licence
- major licence
- woodlot licence
- licence to cut
- Christmas tree permits.

In addition the holder of a road permit may be required by the district manager to have an approved LP before timber harvesting.

Under Section 20 of the Act, the district manager may relieve the holder of a TSL that is not a major licence of the requirement to prepare a LP. If this authority is exercised then the district manager must prepare the LP and the licensee must follow it.

Approving/Giving Effect

Under Section 41 of the Act, the district manager must approve a LP, or amendment, if:

- it was prepared in accordance with the Act, **and**
- he or she is satisfied that it will adequately manage and conserve the forest resources.

Before giving approval, the district manager may require the proposed LP, or amendment, be referred to other agencies, and for a period of time, as specified by the district manager (Section 39 of the Act and Section 6 of the Operational Planning Regulation).

Observation
As LP requirements are based on the date of approval, it is important to make it known to persons who prepare, review, and approve LPs that if a LP is to be approved in accordance with the rules that exist during the first six months of transition, the LP must be submitted in sufficient time to enable approval by December 15, 1995. For instance, major licence holders

may have to submit a LP by November 15, 1995, in order to be reasonably assured that it will be approved by December 15, 1995.

Section 238 of the Act provides the opportunity to ensure LPs associated with cutting permits issued **before** June 15, 1995, are consistent with the requirements of the Act after June 15, 1997. LPs associated with cutting permits issued **after** June 15, 1995, continue until they expire, and therefore, could extend beyond June 15, 1997, without being consistent with the requirements of the Act at that time.

In deciding whether to refer a LP to other agencies, the district manager may wish to consider the referral conditions under the regional MOU.

Withholding Approval

Under Section 41(4) of the Act and Section 2 of the Administrative Remedies Regulation, the district manager may withhold approval of a LP, even though it was prepared and submitted in accordance with the Act if the licensee:

- has previously contravened the Act and,
- has not taken all measures necessary to prevent or minimize the effects of the contravention, or rehabilitate the area to which the contravention pertains.

Logging Plan Content Requirements

1. LPs approved before June 15, 1995:
    - must meet the requirements specified in the licence agreement to which the LP applies and any applicable operating procedures or policy that may have been required when the LP was approved
    - these plans are grandparented and therefore, are subject to amendments, around the five key code standards, under the cut block and road review exercise.

2. LPs approved after June 15th, but before December 15, 1995:
    - must, at a minimum, meet the requirements specified in the licence agreement to which the LP applies (Section 230 of the Act)
    - must satisfy the district manager that it adequately manages and conserves the forest resource (Section 41(1)(b) of the Act).

3. LPs approved after December 15, 1995:

- must meet the requirements of Act and Regulations in full, subject to the approved FDP or SP.

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LPs approved after December 15, 1995 must meet the requirements of the Act and regulations in full, subject to the approved FDP or SP. However, there are certain LP content requirements that must be included that may not be present on the associated FDP or SP. Generally, this will include site specific matters such as the location of temporary culverts and minor stream crossings.

LPs must contain all the content requirements specified in Section 11 of the Act and Part 4 of the Operational Planning Regulation ***that are applicable*** to the cutblock (i.e., there are no "partial" LPs).

Approval/Giving Effect in Emergency Cases

Under Section 42 (2) of the Act and Section 7 of the Operational Planning Regulation the district manager may approve/give effect to a LP, or approve an amendment to the LP, where the cutblock has not been made available for review and comment (through the FDP review and comment process) if the district manager determines that:

- it meets the requirements of the Act and regulations
- the timber on the cutblock should be harvested without delay because it is in imminent danger of being damaged or destroyed.

Exemptions

Under Section 29 of the Act, the district manager may exempt the holder of a major licence, timber sale licence under the SBFEP, woodlot licence, road permit, Christmas tree permit or licence to cut from the requirement for a LP if the district manager determines that the proposed timber harvesting on the cutblock is limited to one or more of the following:

- harvesting of timber from an area other than a right of way if the volume of timber does not exceed 500m3 or the area does not exceed 1 ha.
- harvesting of damaged timber from along a right of way if the area does not exceed .25 ha.
- harvesting timber to facilitate gravel pit or borrow pit development
- harvesting special forest products.

Under Section 29 of the Act, the district manager may exempt the holder of a major licence, timber sale licence under the SBFEP, woodlot licence, road permit, Christmas tree permit or licence to cut from the requirement of a LP if the district manager determines that the proposed timber harvesting on the cutblock is limited to one or more of the following, and, **no road construction is required to provide access to the proposed timber harvesting under the following conditions**:

- elimination of a safety hazard
- collection of seed and is for an area less than 1 ha.
- removal of trees that have already been felled, from landings and road rights of way
- recreation sites or recreation trails
- facilitating entrapment of pests.

Further to the above, Section 33 of the Act states that a district manager may only exempt a person from requiring a LP if the district manager determines that the requirement is not necessary to adequately manage and conserve the forest resource of British Columbia.

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Amendments

There are four ways in which LPs can be amended.

1. Amending grandparented LPs:
    - Under Section 225 and 226 of the Act, grandparented LPs may have to be amended in order to address any non-conformities that have been determined through the cutblock and road review exercise.

2. Voluntary amendments:
    - Under Section 34 of the Act, a person who has a LP may at any time submit an amendment to the district manager for approval. The person may not, however, amend a LP to the detriment of another person who has

relied on the LP.

3. Amendment or replacement of a LP if it is unlikely to succeed:

    - Under Section 35 of the Act, the person who has a LP must submit to the district manager an amendment to the plan if that person knows, or reasonably ought to know, that performing the operations specified in the plan will not achieve the results specified in the plan.

4. Approval/giving effect to minor changes to LPs:

    - Under Section 43(1) of the Act, the district manager or a person authorized by the district manager may approve/give effect to an amendment to a LP where the amendment has not been made available for public review and comment if the district manager or person authorized determines that the amendment:

        - otherwise meets the requirements of the Act
        - will adequately manage and conserve the forest resource
        - does not affect the public in a material way.

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Like approvals, Section 39 of the Act and Section 6 of the Operational Planning Regulation empowers the district manager to refer the LP to other resource agencies. In deciding whether to refer to a LP to other resource agencies, the district manager may wish to consider the referral conditions under the regional MOU.

When the Associated Cutting Authority is Extended

Cutting authority extensions could result in required changes to the LP. Therefore, when processing a request for an extension to a licence or permit the need to amend the LP should be determined prior to the extension and consider approval simultaneously with the issuance of the extension.

Contacts

Further details and direction are available from:

Jim Gowriluk at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

Administrative Bulletin

Number 02 **December 13, 1995**

Guide to Administering Forest Development Plans

This guide is provided for the information of Forest Service staff primarily district managers. While every effort has been made to ensure accuracy, the guide is only intended to provide an overview of the administrative requirements pertaining to forest development plans. It should ***not*** *be interpreted as ministry policy, or legal advice, and it should* ***not*** *be used in place of the Forest Practices Code of British Columbia Act, the Forest Act, or their associated regulations.*

Introduction

This guide provides information respecting forest development plan (FDP) administration under the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*. It focuses on FDP administration during the two-year transition period, i.e. the first six months (the cutblock and road review period) and the next 18 months (the substantial compliance period). The guide also identifies the administrative intricacies of FDPs that were approved prior to June 15, 1995 (grandparented FDPs) and FDPs that extend beyond June 15, 1997.

Background

The purpose of the FDP is to:

- provide a detailed description (e.g. maps and schedules) of the proposed timber harvesting and road activities (building, maintaining and deactivation) over a specified time period - usually five years in length, but may have duration's of 20 year or longer
- enable the licensee to plan operations in a integrated manner
- evaluate impacts of forest development activities on other resource values
- provide for the implementation of goals and objectives of higher level (strategic) plans in effect at the time of approval
- show how the timber supply specific to that tenure will be managed

- allow public, First Nations and other government agencies a formal opportunity to review and provide input respecting the above activities.

FDP administration is governed under the following sections of the Act, regulations and guidebook:

- Act
    - Section 8 standards for operational plans and forest practices
    - Section 10 content
    - Section 17 general planning requirements
    - Section 18 FDPs for SBFEP
    - Section 19 FDPs for major licence or woodlot licence
    - Section 28 exemptions
    - Section 34 voluntary amendments
    - Section 35 amendment or replacement if the plan is unlikely to succeed
    - Section 39 review and comment
    - Section 40 giving effect if the FDP is prepared by the district manager
    - Section 41 approval by district manager or designated environment official
    - Section 42 approval in emergency cases
    - Section 43 approval of minor changes
    - Section 58 authority required to construct of modify a road on Crown land
    - Section 62 road construction and modification must comply with plan
    - Section 63 road maintenance
    - Section 64 road deactivation
    - Section 224 grandparented plans
    - Section 225 (5) and (6) amending plans prepared by major/woodlot licensees
    - Section 226 (5),(6) and (7) amending plans prepared by government
    - Section 228 amendments to grandparented plans
    - Section 228(1) operational plans prevail\

    - Section 229 FDPs approved in the first 6 month period

- Regulations:
    - Operational Planning, Sections 2, 3, 4, 5, 67, 8, 9, 10, 11, 12, and Part 3
    - Timber Harvesting Practices

- Guidebook
    - *Forest Development Plan Guidebook.*

Linkage to the Forest Act

Section 18 of the Act states that the district manager may only invite applications for, or enter into, a timber sale licence that does not provide for cutting permits if a FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

Section 18 of the Act also requires that the holder of a timber sale licence that is not a major licence and that provides for cutting permits may only apply for a cutting permit if the FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

Section 19 of the Act requires that holders of a major licence, woodlot licence and pulpwood agreement may only apply for a cutting authority if the FDP identifies:

- the cutblocks to be harvested under the cutting authority; and
- the existing and proposed roads that provide access to the cutblocks.

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Term of a Forest Development Plan

An FDP takes effect on:

- the effective date specified in the FDP - *if prepared by the government* or;
- the approval date for the FDP - *if prepared by a licence holder.*

Section 9 of the Operational Planning Regulation specifies that, unless otherwise specified by the district manager. an FDP expires:

- One year from the date on which the plan takes effect if the district manager prepares the plan, or, if the holder of a major licence prepares the plan, one year from the date specified on the approval (NOTE: there are provisions where the district manager may specify a period not to exceed two years); and
- Five years from the date on which the plan takes effect if a holder of a timber sale licence that is not a major licence and that provides for cutting permits prepares the plan with the district manager's consent, or, if the holder of a woodlot licence prepares the plan, five years from the date specified on the approval.

Period Covered Under a Forest Development Plan

Regardless of the term above, an FDP must cover a period of at least five years unless, of course, the years of operations remaining under the agreement to which the plan applies is less. Section 15 of the Operational Planning Regulation outlines the content requirements for FDPs showing a period of five years or less.

Section 16 of the Operation Planning Regulation outlines the content requirements for FDPs showing a period greater than five years.

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Notice, Review and Comment

Subject to the transition provisions under Section 229(3) of the Act, before a person submits an FDP for approval, or before a district manager puts a FDP into effect (or an amendment to any of those plans) the person or district manager must publish a notice in the *Gazette* and in a newspaper circulating nearest to the area of the proposed operations. Refer to Section 39 of the Act and Sections 2 to 6 of the Operational Planning Regulation.

The public must be given a minimum of 60 days from the date of the last advertisement (referred to in the previous paragraph) to comment, and the licensee or district manager must make the plans available for public viewing at locations and times that are convenient to the public and approved by the district manager.

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Area Under the FDP

Section 13 of the Operational Planning Regulation requires that the FDP address an area sufficient in size to include all the areas affected by the timber harvesting and road construction operations proposed under the plan.

Approving/Giving Effect

Under Section 40(1) of the Act, the district manager may only give effect to an FDP, or amendment, if the plan or amendment meets the requirements of the Act and regulations.

Under Section 41(1) of the Act, the district manager must approve an FDP, or amendment, if:

- it was prepared in accordance with the Act and regulations; and
- he or she is satisfied that it will adequately manage and conserve the forest resources.

Section 4 1(5) enables the district manager to make his or her approval, or amendment, subject to a condition.

Section 41(6) and (7) requires that the portion of an FDP, or amendment, that covers an area in a community watershed must be approved jointly by the district manager and a designated environment official.

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Extensions

Under Sections 18(1) and 19(1) of the Act, the district manager may extend an FDP for a period not exceeding one year. The Act requires that whenever an FDP is extended, it must promptly be amended to the extent necessary to ensure compliance with the **current** requirements of the Act and regulations.

The district manager may approve an extension **before or after** a FDP expires. Please note that this is unlike a cutting permit which can only be extended **before** the authority expires.

When an extension has been approved, Section 10 of the Operational Planning Regulation requires the person responsible for preparing the FDP to publish in a newspaper a statement, approved by the district manager, specifying:

- the agreement to which the extension applies;
- the term of the FDP; and
- the period of extension received.

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Content Requirements

1. FDPs approved before June 15, 1995:
    - must meet the requirements specified in the licence agreements to which the FDP applies and any applicable operating procedure or policy that may have been required when the FDP was approved; and
    - it is important to note that these FDPs are grandparented and therefore, are subject to amendments, pertaining to the five key code standards, under the cutblock and road review exercise.

2. FDPs, or amendments, approved/given effect after June 15th, but before December 15, 1995.
    - Section 229(1) of the Act requires that FDPs approved or given effect during this period:

- need not comply with the content and review and comment requirements of the Act and regulations;
- must meet the requirements specified in the licence agreements to which the FDP applies and any applicable operating procedure or policy that may have been required when the FDP was approved: and
- despite the above, Section 229(2) requires that if the district manager determines that the FDP, or amendment, does not conform to the five key code standards, the district manager may amend the plan, or amendment, to the extend necessary to satisfy him/herself that the cutblocks and roads will be consistent with conservation and good management of the forest resources.

3. FDPs, or amendments, approved/given effect after December 15, 1995, but before June 15, 1997.
    - Section 229(3) of the Act requires that FDPs approved or given effect during this period must:
        - meet the review and comment requirements of the Act and regulations;
        - substantially meet the other requirements of the Act and regulations; and
        - meet the requirements of the agreement for which it was prepared, to the extent the agreement is consistent with this Act and regulations.

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Approval/Giving Effect in Emergency Cases

Under Section 42(1) of the Act and Section 7 of the Operational Planning Regulation, the district manager may approve/give effect to a FDP or amendment without the plan or amendment having been made available for review and comment if the district manager determines that the plan or amendment:

- otherwise meets the requirements of the Act and regulations; and

- the timber on the area should be harvested without delay because it is in imminent danger of being damaged or destroyed.

Exemptions

Under Section 28 of the Act, the district manager may exempt the requirement for an FDP under:

- a TSL that does not provide for cutting permits;
- a TSL that is not a major licence that does provide for cutting permits;
- a major licence;
- a woodlot licence; and
- If the district manager determines that the only timber harvesting that will take place on the area is:
    - to eliminate a safety hazard;
    - facilitate the collection of seed and the harvesting area will not exceed one ha;
    - removal of trees already felled from landings and road rights of way;
    - removal of trees from recreation sites or trails; or
    - harvesting of trees to facilitate the entrapment of pests; and
    - there is no road construction required to access the timber harvesting listed above.

Amendments

There are four ways that FDPs can be amended:

1. Amending grandparented plans.
   Under Sections 225 and 226 of the Act, grandparented FDPs may have to be amended in order to address any non-conformities that a district manager decides to take action on under the cutblock and road exercise.

2. Voluntary amendments.
   Under Section 34(1) of the Act, a person who has an FDP may at any time submit an amendment to it to the district manager for approval. The person may not, however, amend an FDP to the detriment of another person who relied on the FDP.

3. Amendment or replacement of an FDP if it is unlikely to succeed.
   Under Section 35(1) of the Act, the person who has an FDP must submit to the district manager an amendment to the plan if that person knows, or reasonably ought to know, that performing the operations specified in the plan will not achieve the results specified in the plan.

4. Approval/giving effect to minor changes.
   Under Section 43(1) of the Act, a district manager or a person authorized by the district manager may approve/give effect to an amendment to an FDP where the amendment has not been made available for public review and comment if the district manager or person authorized determines that the amendment:

   - otherwise meets the requirements of the Act and regulations;
   - will adequately manage and conserve the forest resources; and
   - does not affect the public in a material way.

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Contacts

Further details and direction are available from:

Jim Gowriluk at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

FOREST PRACTICES CODE

Administrative Bulletin

Number 03 **October 25, 1996**

Guide to Approving Operational Plans during Substantial Compliance

This guide is provided for the information of Forest Service staff, primarily district managers. While every effort has been made to ensure accuracy, the guide is only intended to provide an overview of the administrative requirements pertaining to operational plan approvals. It should not be interpreted as ministry policy, or legal advice, and it should not be used in place of the Forest Practices Code of British Columbia Act (Act), the Forest Act, their associated regulations or in place of advise of your solicitor.

For a copy of the draft Operational Plan Approval Letter (FDP) please see Appendix 1

Introduction

This guide provides information on evaluating forest development plans (FDP), silviculture prescriptions (SP) and logging plans (LP). It provides details on approval of operational plans during the substantial compliance period. This administrative guide supports the following administrative guides;

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Pages 306 through 307 redacted for the following reasons:
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Section 40 - Act Giving Effect to Operational Plans Prepared by a DM

Most of the administrative law principles that apply to an approval under section 41 also apply when a DM gives effect to an operational plan under section 40.The wording difference is because in the case of the DM, the same person is preparing and deciding whether to implement the plan. Section 40 does not have a subsection (b) similar to section 41 because section 4 of the, MoF Act already places requirements on the DM to deal with managing the forest resource adequately.

For administrative ease, the DM should provide details to the staff assisting in the preparation of operational plans of what expectations would be regarding giving effect to any plan.

Section 41 - Approvals of Plans by a DM or Designated Environment Official (DEO)

Statutory decision makers approve operational plans under this section for major licensees and woodlot licensees.

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Section 41(1) - When a DM Must Approve an Operational Plan

The DM must approve an operational plan or amendment submitted under this Part if the two requirements set out in subsection 41 (1)(a) and (b) are met.

Section 41(1)(a) - Operational Plans Prepared and Submitted in Accordance with the Act and Regulations

Subsection 41(1)(a) requires the statutory decision maker to determine if the operational plan was prepared and submitted in accordance with the Act and regulations. The substantial compliance transitional provisions of Part 11, apply to the content requirements of all operational plans except for the LP and SP, which must already be in full compliance. These transitional provisions terminate on:

- December 15, 1996 for SMP and FYSP
- June 15, 1997 for the FDP/AMP, and
- December 15, 1997 for the RUP.

Once applicable Part 11 provisions terminate, the operational plan content must fully comply with the Act and regulations. As mentioned earlier, advertising and review and comment requirements of the legislation must be met now, they are not subject to substantial compliance.

Section 41(1)(b) - Adequately Manage and Conserve

Subsection 41(1)(b) requires the statutory decision maker to determine if the plan will adequately manage and conserve the forest resources. This is an additional requirement over and above the requirement that the plan comply with the Act and regulations.

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Information that may be of assistance in determining adequate management and conservation includes review and comments, guidebooks, policy, procedures. However, these inputs must be used in a manner that does not fetter the decision maker. This statutory decision is that of the decision maker alone; the decision maker is not bound by any of the above information. For more information please refer to the section on guidebooks on page nine.

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Section 41(2) - Submission of Additional Information

This section provides authority for the DM to request additional information to assist in determining if the operational plan should be approved. Examples include higher resolution maps or more detailed site assessment information.

Section 41(3) - Approval Only if Plan Meets 41(1)

Under this section the statutory decision maker may only approve an operational plan if it meets the requirements of section 41(1).

Section 41(4) - Right to Refuse Approval or Amendments to LP

The section provides the statutory decision maker with authority to withhold approval of an LP or amendment if the applicant has not taken all measures necessary to prevent or minimize the effects of a previous contravention of the Act or regulations. Section 63.1 of the Forest Act provides authority for refusing or placing special conditions on a cutting permit.

Section 41(5) - Approval of FDP Subject to a Condition

The statutory decision maker may approve a FDP or amendment subject to a condition. However, subsection (3) requires that all the requirements of the Act and regulations be met and that the decision maker be satisfied that the plan or amendment adequately manages and conserves forest resources before the conditional approval is issued.

Therefore, the DM may find there are few situations when a conditional approval will be appropriate. This provision does not authorize granting conditional approval on cutblock basis as was a common practice under contractual agreements before the statute came into effect. This should be limited to situations where valid concerns identified during the review and comment process were addressed, but still may require some simple clarification to ensure that the intended action is clearly identified or conveyed.

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Section 41(6) - Joint Approval

This section requires the approval of the DEO in addition to the approval of the DM for that portion of the FDP that is contained within a community watershed or that meets prescribed requirements as detailed in the OPR. Under section 8 of the OPR, joint approval is required if the requirement is contained in a higher level plan or all or part of a FDP or amendment if the DM and DEO agree that joint approval is appropriate in the circumstances.

Section 41(7)

This section requires the DEO to approve an FDP or amendment under subsection (6) if it meets the requirements of subsection (1) and the DEO is satisfied that it will adequately manage and conserve the forest resources. Like the DM, the DEO can also apply substantial compliance in approval of the FDP or amendment for content, but not review and comment requirements.

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Section 41(8) to (13)

These sections provide administrative details around the definition, designation, cancellation and amending of plans in community watersheds.

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Section 42 - Approval in Emergency Cases

It is up to the DM to first determine that there is an emergency, this would be a joint decision if it is an area referred to in section 41(6). Once that has been determined, then the FDP is approved without review and comment, the SP and LP can be approved if they comply with the regulations, and the timber should be harvested without delay because it is in imminent danger of being damaged or destroyed.

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Section 43 - Minor Amendments

Delegation of minor chances to operational plans is permitted under section 43 of the Act. The following conditions must be achieved:

- the amendment meets the requirement of the Act and regulations
- adequately manages and conserves the forest resources, and
- does not affect the public in a material way.

If all three conditions are met then the statutory decision maker or designate may approve the amendment without review and comment.

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Pages 313 through 318 redacted for the following reasons:
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Contacts

For any questions regarding the above, please contact your **regional timber officer**, or

Doug Kelly at Doug.Kelly@gems4.gov.bc.ca
Charlie Western at Charlie.Western@gems4.gov.bc.ca.

Draft Operational Plan Approval Letter (FDP)

For a copy of the draft Operational Plan Approval Letter (FDP) please see Appendix 1

Guide to Approving Operational Plans during Substantial Compliance Appendix 1

Draft operational plan approval letter (FDP)

revised Oct. 24, 1996

file :

To: licensee

Your forest development plan (FDP) submission of *(date)* for the years *(1996-2000)* for *(forest licence ____)* in the _____ timber supply area has now been fully reviewed.

Determination

I am satisfied that the proposed plan has been prepared and submitted in accordance with the *Forest Practices Code of British Columbia Act* (Act) and regulations under section 41(1)(a). I am also satisfied that the plan will adequately manage and conserve the forest resources to which it applies under section 41(1)(b) of the Act.

Accordingly, as the statutory decision maker under section 41 of the Act, I hereby approve your FDP.

The term of the plan is _____ *(up to two years from the date of approval).*

Further development taking place under *(forest licence ____)* must be done in accordance with the approved FDP. Expectations regarding this development are attached or will be communicated via separate cover.

If you need clarification on any aspect of this determination, please contact _____.

Yours truly,

District Manager,
_____ Forest District

Rationale

Having reviewed the material submitted to me, which included _____, the comments from the public and other resource agencies, my reasons for approving your plan are as follows:

Statements in the rationale would be along the lines of " I am aware of..... (the issue), and have resolved it in favour of approval, (how you resolved in order for granting approval).

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Pages 322 through 323 redacted for the following reasons:
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Administrative Bulletin

Number 04 **not dated**

Guide to Approving Operational Plans after June 15, 1997

This guide is provided for the information of Forest Service staff, primarily district managers. While every effort has been made to ensure accuracy, the guide is only intended to provide an overview of the administrative requirements pertaining to operational plan approvals. It should not be interpreted as ministry policy, or legal advice, and it should not be used in place of the Forest Practices Code of British Columbia Act (Act), the Forest Act, their associated regulations or in place of advise of your solicitor.

Introduction

This guide provides information to evaluate forest development plans (FDP), silviculture prescriptions (SP) and logging plans (LP). It provides details on approval of operational plans after June 15, 1997. This administrative guide replaces Guide to Approving Operational Plans during Substantial Compliance, dated October 25, 1996.

Important legislative amendment: The *Forest Statutes Amendment Act*, 1997 (Bill 47) was proclaimed into law on July 30, 1997. This bill contained key amendments to the *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act*, some of which became effective immediately and others will be brought into effect by regulation.

Section 160 of the bill specifies how the sections will be brought into effect. Further detail is provided on the electronic bulletin under BBLEGIS. This bulletin reflects the current approval requirements for operational plans and will be amended as new requirements are brought into law. For example, the bill eliminates the LP except when required under a "licence to cut" or for road construction covered by a road permit that is not held by a major licensee. This amendment will become effective by regulation early in 1998. The same amendment will substantially change the requirements for the SP and may necessitate changes to some of the road or cutting permit documents.

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Pages 2 through 8 redacted for the following reasons:
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Section 40 — Act Giving Effect to Operational Plans Prepared by a DM

Most of the administrative law principles that apply to an approval under s.41 also apply when a DM gives effect to an operational plan under s.40. The wording difference is because in the case of the DM, the same person is preparing and deciding whether to implement the plan. Section 40 does not have a subsection (b) identical to s.41 because s.4 of the Ministry of Forests Act requires the DM to manage the forest resource adequately.

Section 41 — Approvals of Plans by DM or Designated Environment Official (DEO)

Statutory decision makers approve operational plans under this section for major licensees and woodlot licensees.

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Important legislative amendment: Bill 47 provided authority for adding a third test that would require the DM to be satisfied that the plan adequately addresses the government's economic objectives including those provided for in a HLP. This third test is not in effect, it is anticipated that changes will be made to the legislation early in 1998.

Important legislative amendment: Bill 47 provided authority for the DM to approve a portion of an FDP if joint approval is not required. This new authority is not in effect, it is anticipated that changes will be made to the legislation early in 1998.

Section 41(1) — When a DM Must Approve an Operational Plan

The DM must approve an operational plan or amendment submitted under this part, if the

two requirements set out in s.41(1)(a) and (b) are met. From an administrative law perspective, s.41(1)(a) is a mandatory decision and s.41(1)(b) is discretionary in the first part, then once satisfied becomes a mandatory decision. There is an important cross-reference to s.41(3) that prohibits approval if the plan does not meet standards.

Section 41(1)(a) — Operational Plans Prepared and Submitted in Accordance with the Act and Regulations

Section 41(1)(a) requires the statutory decision maker to determine if the operational plan was prepared and submitted in accordance with the Act and regulations. The substantial compliance transitional provisions of Part 11 for RUP, (s.237) remains in effect until December 14, 1997. All other operational plans that are approved after June 15, 1997, must fully comply with the content requirements of the Act and regulations.

Section 41(1)(b) — Adequately Manage and Conserve

Section 41(1)(b) requires the statutory decision maker to determine if the plan will adequately manage and conserve the forest resources. This is an additional requirement over and above the requirement that the plan comply with the Act and regulations.

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Information that may be of assistance in determining adequate management and conservation includes review and comments, guidebooks, policy and procedures. However, these inputs must be used in a manner that does not fetter the discretion of the decision maker. This statutory decision is that of the decision maker alone; the decision maker is not bound by any of the above information. For more information please refer to the section on guidebooks below.

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Section 41(2) — Submission of Additional Information

If the DM, is not satisfied that he or she has the necessary information to determine if the plan will adequately manage and conserve the forest resources, they may request additional information to assist in their determination under this section. Examples include higher resolution maps or more detailed site assessment information.

Section 41(3) — Approval Only if Plan Meets 41(1)

Under this section the statutory decision maker may only approve an operational plan if it meets the requirements of s.41(1) (e.g. nothing more, nothing less).

Section 41(4) — Right to Refuse Approval or Amendments to LP

This is a performance based harvesting provision that provides the statutory decision maker with authority to withhold approval of a LP or amendment if the applicant has not taken all measures necessary to prevent or minimize the effects of a previous contravention of the Act or regulations. Section 63.1 of the Forest Act provides authority for refusing, or placing special conditions on, a cutting permit.

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Section 41(6) — Joint Approval

This section requires the approval of the DEO in addition to the approval of the DM for that portion of the FDP that is contained within a community watershed or that meets prescribed requirements as detailed in the OPR. In addition, s.8 of the OPR provides that the requirement for joint approval may be established in a higher level plan or if the DM and DEO agree that joint approval is appropriate in the circumstances.

Section 41(7) — DEO Approval

This section requires the DEO to approve a FDP or amendment under s.41(6) if it meets the requirements of s.41(1) and the DEO is satisfied that it will adequately manage and conserve the forest resources.

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There is always the potential for different decisions. If the DM and DEO continue to disagree, the onus is on the proponent of the plan to modify the plan to the extent that both approve.

Section 41(8) to (13)

These sections provide administrative details around the definition, designation, cancellation and amendment of plans in community watersheds.

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Section 42 — Approval in Emergency Cases

It is up to the DM to first determine that there is an emergency; this would be a joint decision with the DEO if it is an area referred to in s.41(6). Once it has been determined that there is an emergency, the FDP may be approved without review and comment the SP and LP can be approved if they comply with the regulations and standards, and the timber should be harvested without delay because it is in danger of being damaged, significantly reduced in value, lost or destroyed. Please note, some review and comment provisions may still apply subject to the DMs determination.

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Section 43 — Minor Amendments

Minor changes to operational plans are permitted under s.43 of the Act. The amendment must achieve all of the following conditions:

- meets the requirement of the Act and regulations;
- adequately manages and conserves the forest resources; and,
- does not affect the public in a material way.

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Pages 14 through 20 redacted for the following reasons:
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Administrative Bulletin

Number 05 **May 26, 1998**

Guide to Approving Forest Operational Plans after June 15, 1998

This guide is provided for the information of Forest Service staff, primarily district managers. While every effort has been made to ensure accuracy, the guide is only intended to provide an overview of the administrative requirements pertaining to operational plan approvals. It should ***not*** *be interpreted as ministry policy, or legal advice, and it should* ***not*** *be used in place of the Forest Practices Code of British Columbia Act (Act), the Forest Act, their associated regulations or in place of advise of your solicitor.*

Introduction

The *Forest Practices Code of British Columbia Act* (the FPC) identifies five operational plans:

1. Forest Development Plans (FDPs)
2. Logging Plans (LPs)
3. Silviculture Prescriptions (SPs)
4. Stand Management Prescriptions (SMPs) and
5. Range Use Plans (RUPs).

This bulletin provides information to evaluate FDPs and SPs with some mention of LPs, SMPs and RUPs. It provides details on approval of operational plans after June 15, 1998 that reflect recent revisions to the FPC and the following four regulations which were deposited April 2, 1998 (see Section 14 - Transition):

1. Operational Planning Regulation
2. Timber Harvesting Practices Regulation
3. Forest Road Regulation
4. Silviculture Practices Regulation.

This administrative bulletin replaces the Guide to Approving Forest Operational Plans after June 15, 1997, which is dated August 15, 1997.

Pages 22 through 33 redacted for the following reasons:
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FPC40 - Act Giving Effect to Operational Plans Prepared by a DM

The administrative law principles that apply to an approval under FPC41 also apply when a DM gives effect to an operational plan under FPC40. The wording difference is required to address the dual role of the DM in being responsible for preparing the plan and giving it effect. FPC40 does not have a subsection (1)(b) identical to FPC41 because Section 4 of the Ministry of Forests Act already requires the DM to manage and conserve the forest resources.

FPC 41 - Approvals of Plans by DM or DEO

SDMs approve operational plans under this section for major licensees and woodlot licensees.

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FPC41(1) - When a DM Must Approve an Operational Plan

The DM must approve an operational plan or amendment submitted under this part, if the two requirements set out in FPC41(1)(a) and (b) are met. From an administrative law perspective, FPC41(1)(a) is a mandatory decision and FPC41(1)(b) is discretionary in the first part, then once satisfied becomes a mandatory decision. There is an important cross-reference to FPC41(3) that prohibits approval if the plan does not meet standards.

FPC41(1)(a) - Operational Plans Prepared and Submitted in Accordance with the FPC and Regulations

FPC41(1)(a) requires the SDM to determine if the operational plan was prepared and submitted in accordance with the FPC and regulations.

FPC41(1)(b) - Adequately Manage and Conserve

FPC41(1)(b) requires the SDM to determine if the plan will adequately manage and conserve the forest resources. In terms of adequately, it means just that and not optimally or maximally. With respect to conserve, this is meant to be sustainable wise use and not preservation. FPC41(1)(b) is an additional requirement over and above the requirement that the plan comply with the FPC and regulations and is meant to catch the gaps in FPC41(1)(a) and be a final look versus a carte blanche opportunity to ask for new information.

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Information that may be of assistance in determining adequate management and conservation includes comments from the review, guidebooks, policy and procedures. However, these inputs must be used in a manner that does not fetter the discretion of the decision maker. This statutory decision is that of the decision maker alone; the decision maker is not bound by any of the above information. For more information please refer Section 6.0, Guidebooks, on the next page.

FPC41(2) - Submission of Additional Information

If the DM is not satisfied that he or she has the necessary information to determine if the plan will adequately manage and conserve the forest resources, additional information

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FPC41(6) - Joint Approval

This section requires the approval of the DEO in addition to the approval of the DM for that portion of the FDP that is contained within a community watershed or that meets prescribed requirements as detailed in the OPR. In addition, OPR2 provides that the requirement for joint approval may be established in a higher level plan or if the DM and DEO agree that joint approval is appropriate in the circumstances. The SDM, in making decisions on non-joint approval areas, should ensure that the results of his or her decisions don't affect the management of adjacent joint approval areas.

FPC41(6.1)

This section provides the authority for the DM to approve any part of an FDP, or any part of an amendment that does not require joint approval.

FPC41(7) - DEO Approval

This section requires the DEO to approve an FDP or amendment under FPC41(6) if it meets the requirements of FPC41(1) and the DEO is satisfied that it will adequately manage and conserve the forest resources.

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FPC41(8) to (13)

These sections establish an administrative framework around the definition, designation, cancellation and amendment of operational plans in community watersheds.

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FPC42 - Approval in Emergency Cases

It is up to the DM to first determine that there is an emergency; this would be a joint decision with the DEO if it is an area referred to in FPC41(6). Once it has been determined that there is an emergency, the FDP may be approved without review, the SP and LP can be approved if they comply with the regulations and standards, and the timber should be harvested without delay because it is in danger of being damaged, significantly reduced in value, lost or destroyed. This damage should imminent such that not having a review period or less than full content FDP is absolutely required and no other mechanisms, such as expedited major salvage, can address the need. Please note, some review provisions may still apply subject to the DM's determination.

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Important Regulation change: An important change in the OPR is the addition of provisions for "expedited major salvage operation." Refer to Section 12.0 - Salvage Operation.

FPC43 - Minor Amendments

Minor changes to operational plans are permitted under FPC43. The amendment must achieve all of the following conditions:

- meets the requirement of the FPC and regulations;
- adequately manages and conserves the forest resources;
- does not materially change the objectives or results of the plan.

If all three conditions are met, then the SDM or designate may approve the amendment without review. While the process for determining a minor amendment does not vary, the decision must be made based on the particular set of circumstances for the request.

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Administrative Bulletin

Number 06 **February 9, 1999**

Silviculture Prescriptions for Multiple Salvage Areas

Introduction

This document provides information for district managers to consider in administering silviculture prescriptions (SP) for minor salvage operations. Please note, further information regarding approval of operational plans is available from the Resource Tenures and Engineering Branch document titled, "Administration of Forest Operational Plans" which is available on the Ministry of Forests Intranet.

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Pages 52 through 54 redacted for the following reasons:
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General Bulletin

Number 01 **September 15, 1995**

Cutting Permits Without Logging Plan Approvals

Background

The *Forest Practices Code of British Columbia Act* (Act) requires an approved logging plan to be in effect prior to commencement of harvesting operations (section 21). A plan must be submitted by woodlot or major license holders and approved by the district manager. All cutting permits that were grandparented in with the new Act or approved after June 15 (section 230) must have a logging plan except in cases where the district manager has granted exemption. In the case of the SBFEP the district manager has the option of preparing the logging plan (section 20).

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Contacts

Further details and direction are available from:

Jim Gowriluk at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

General Bulletin

Number 02 **July 10, 1995**

Excavated or Bladed Trails

Background

Section 68 of the *Forest Practices Code of British Columbia Act* (Act), requires an excavated or bladed trail to be identified for silviculture prescription, logging plan, range use plan or special use permit before the trail is constructed. This section applies to grandparented operational plans or operational plans approved after June 15, 1995.

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General Bulletin

Number 03 **July 10, 1995**

Requirement to Identify Road Permits on Forest Development Plans

Background

Section 58 of the *Forest Practices Code of British Columbia Act* (Act) states that a person may only construct or modify a road if the road is identified in a forest development plan (FDP) or an access management plan (AMP) and is authorized under a road permit. This limitation may restrict the approval of road permits where a FDP is still under review, or if the road is not identified in the existing FDP or AMP. There are several alternatives that the district manager could use in approval of road permit applications.

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Contacts

Further details and direction are available from:

Ron Davis at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

General Bulletin

Number 04 **not dated**

Approving Forest Development Plans between June 15 & December 15, 1995

Background

Under the *Forest Practices Code of British Columbia Act* (Act), there are two authorities - sections 225 and 229(2) - given to district managers for amending FDPs during transition.

Section 225 provides district managers the authority to amend cutblocks and roads identified in grandparented operational plans and the associated RPs and CPs.

Section 229(2) provides district managers with the authority to amend FDPs submitted after June 15, 1995 where CP and RP applications have not yet been received. This section does not give the district manager authority to amend CPs and RPs issued under the new FDP (ie., you must amend the FOP before issuing a CP or RP).

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Contacts

Further details and direction are available from:

Jim Gowriluk at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

General Bulletin

Number 05 **September 12, 1995**

Content and Review Requirements of Forest Development Plans Submitted between June 15 & December 15, 1995

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Act) allows for amendments to the Act an regulations to remedy transitional difficulties encountered during code implementation. Amendments may be retroactive to June 15, 1995.

On August 17, 1995, an Order In Council was approved amending the Operational Planning Regulation. The amendment clarifies the content and review requirements of grandparented forest development plans (FDP) and FDPs submitted between June 15 and December 15, 1995.

These requirements are summarized in the following table:

FDP	Content and Review Requirements
Woodlot licence FDP	These plans must include: • Maps and schedules describing: o the size, shape and location of cutblocks proposed for harvesting; o the location of existing and proposed roads; o the timing of proposed harvesting and related forest practices. including road activities from construction through to deactivation • Descriptions of the silviculture systems and harvesting methods that will b carried out within the cutblocks and measures that will be carried out to protect forest resources.
All other FDP	These plans must meet the requirements that apply to a FDP under its associated licence agreement.

Contacts

Further details and direction are available from:

Russ Cozens at ???
Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

General Bulletin

Number 06 **February 26, 1996**

Visual Quality Objectives

This bulletin has been prepared for district managers to assist them in interpreting their powers regarding visual quality objective management wider the code. These recommendations are for district managers to consider and should ***not*** be interpreted as Ministry policy or legal interpretation.

Definitions

"Visual Quality Objectives" (VQOs) are defined in Sec. 1 of the Operational Planning Regulation (OPR). They are a resource management objective established by the district manager or contained in a higher level plan that reflects the desired level of visual quality based on the physical characteristics and social concerns for the area.

"Known" VQOs that have been established by a higher level plan are automatically considered "known" (OPR Sec. 1(3)). Where VQOs are established independently by the district manager, this information must be made available to licensees at least four months before the date of the forest development plan (FDP) submission to formally qualify as "known" (OPR Sec. l(3)).

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General Bulletin

Number 07 **February 26, 1996**

Scenic Areas

This bulletin has been prepared for district managers to assist them in interpreting their powers regarding scenic area management under the code. These recommendations are for district managers to consider and should ***not*** be interpreted as Ministry policy or legal interpretation.

This bulletin is concerned exclusively with scenic areas that do not have established VQOs. See General Bulletin #6 regarding the management of scenic areas with VQOs.

Definition

"Scenic areas" are defined in Sec. 1 of the *Operational Planning Regulation* (OPR). They are any visually sensitive area or scenic landscape identified through a visual landscape inventory or planning process carried out or approved by the district manager. Visual landscape inventories are described in Chapters 6 and 11 of the Ministry of Forests *Recreation Manual*.

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FOREST PRACTICES CODE

General Bulletin

Number 08 **March 21, 1996**

Range Use Plans

Transitional Provisions

Section 236 of the *Forest Practices Code of British Columbia Act* (Act) establishing transitional provisions for range plans came into effect on December 15, 1995. During the period of December 15, 1995 to June 15, 1996 range use plans need not meet the review, comment and content requirements of the Act or regulations can be for a period less than that specified in Sec. 27(5) of the Act. When approving a range use plan during this period the district manager must be satisfied that the plan will adequately manage and conserve the forest resources of the area to which it applies (Sec 41.(l)(b)).

During the June 16, 1996 to December 15, 1997 period, range use plans must meet the review and comment requirements of the Act and regulations but need only be in substantial compliance with the content requirements.

Phase-In Provisions

The *Operational Planning Regulation* (OPR) in Sec. 69(2) and Sec. 71(3) provides phase-in provisions for range use plans under Sec. 69.(1)(f, h & j) and 71.(a, b & c) until June 15, 1997. These provisions provide the district manager with the authority to exempt a person from describing wildlife, plant community and biodiversity strategies if he/she determines that a site assessment would be required.

Exemptions in Regulations

The OPR in Sec. 69(3) provides the district manager with the authority to exempt a person from describing any or all of the resource values referred to in Sec. 69.(1)(a)(iv), 69.(1)(e) and 69.(1)(f) for any or all of the area under a range use plan if there is no significant potential for livestock to negatively affect range land. Joint agreement with the designated environment official is required for exemptions under Sec. 69.(1)(a)(iv) and 69.(1)(f). NOTE: See amendment.

Term of Range Use Plans

Under Sec. 27.(5) a district manager can approve range use plans for a period of five years or the duration of the agreement. Section 224.(5) of the Act deemed range tenures that existed on June 14, 1995 as grandparented plans. These grandparented plans remain in effect until the first of the following happen:

- the tenure expires or is cancelled, surrendered or otherwise terminated;
- the grandparented plan is replaced;
- June 15, 1997.

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General Bulletin

Number 09 **June 18, 1996**

Harassment of Livestock

Background

Livestock producers and other holders of *Range Act* tenures often use Crown range to graze livestock in accordance with range use plans. Range used for grazing may be simultaneously allocated for other tenured uses such as wood fibre production, and untenured uses such as recreation. This integrated resource management on Crown range may lead to potential conflicts between tenure holders acting under the *Range Act* and other users of Crown range.

Situations may arise where authorized livestock is harassed or disturbed, intentionally or unintentionally, by other users of the range. For example, horse riders on expeditions to round up feral horses on Crown range may disturb authorized horses and cattle being grazed in compliance with a Range Use Plan. Another example is the case of recreational motor-bike trail riders spooking cattle and causing a stampede.

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Contacts

Further details and direction are available from:

Ken Balaski at ???
Charlie Western at ???

FOREST PRACTICES CODE

General Bulletin

Number 10 **June 18, 1996**

Review and Comment Process for Range Use Plans and Range Use Plan Amendments

Background

Section 27 of the (??? what act) Act requires that the district manager approve a Range Use Plan before livestock grazing, hay cutting or range developments occur. The district manager may, by notice, relieve the range agreement holder of the obligation to prepare and submit a range use plan (sec. 27(2) of the Act), however the plan is still required and would be undertaken by the district manager.

Sections 34 and 35 of the Act describe the circumstances under which a range use plan can be amended by the range agreement holder or the district manager.

The Operational Planning Regulation (OPR) requires that:

- a person preparing a range use plan or amendment to a range use plan (except for minor amendments) publish a notice in a newspaper (section 2);
- a copy of the plan be made available to the district manager (section 3);
- a person publishing notice give adequate opportunity for review and comment during a 30 or 60 day period, and that any appropriate revisions be made (section 4).

The district manager might also, by notice, require that an operational plan or plan amendment be (section 6):

- referred to resource agencies and any other person or agency;
- made available for public viewing at specified times and locations;
- made available for review and comment for 60 days.

Where notice is given under sec. 6 of the OPR, the person receiving notice is required to review all written comments and make any appropriate revisions to the proposed plan or amendment as per sec 4(5) of the OPR. These comments and a summary of all revisions must be included with the plan and submitted for approval.

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General Bulletin

Number 11 **June 24, 1996**

Archaeological Impact Assessment Amendments

Background

Amendments to Section 26(1) and 63(1) of the *Forest Practices Code of British Columbia Act* (Act) were approved on February 2, 1996. Please refer to Regulation Bulletin #6 for additional detail. The amendments provides district managers greater discretion in determining if an archaeological impact assessment (AlA) is required for an area under a forest development plan (FDP).

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Contacts

Further details and direction are available from:

Diane Goode at ???

General Bulletin

Number 12 **July 10, 1996**

Road Permits and Non-status Roads

Background

Section 54(1) of the *Forest Practices Code of British Columbia Act* (Act) provides authorization and exemption for the use of two categories of roads for which a district manager has authority:

1. road built under a road permit or other harvesting authorization; and
2. roads that are currently non-status.

Sec. 54 pertains to, among other issues, a licensee using non-status roads on Crown land for timber harvesting and related forest practices having authority under a road permit. The **licensee** may be exempted from the requirement of a road permit under sec. 54(5). There has been much discussion as to what constitutes "related forest practices", as well as how to measure the time component of the exemption.

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FOREST PRACTICES CODE

General Bulletin

Number 13 **August 22, 1996**

Dealing with Danger Trees: Exemptions and Cutting Authorization

Background

Workers' Compensation Board Industrial Health and Safety Regulations require all snags that could endanger workers (danger trees) must be felled before starting yarding or skidding operations. The *Forest Practices Code of British Columbia Act* (Act) and the *Forest Act* provides authority for danger trees to be addressed in the operational planning process and in issuing of harvesting authorities. This bulletin provides details on managing danger trees where planning processes have not addressed felling or harvesting of these trees. Another bulletin titled *Planning for Danger Trees: Avoiding Plan Amendments* is being developed.

A faller may be permitted to fell danger trees located outside a cutblock or within wildlife tree patches or within a riparian management area, **if in the opinion of the faller**, the tree represents a safety hazard. In addition, trees used for tail holds and anchor trees (tool trees) or trees adjacent to these may also be felled if they constitute a safety hazard.

To fell a danger or tool tree the following are required:

- the area outside the cutblock boundary where felling danger trees may occur must be exempted from the requirement to be identified in a forest development plan (FDP), and logging plan (LP); and

- the area must be identified under the silviculture prescription (SP) or exempted from the prescription (a SP can provide details on felling of danger frees outside the cutblock); and

- felling, bucking and utilization of danger trees outside the cutblock must be authorized in a cutting authority.

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FOREST PRACTICES CODE

General Bulletin

Number 13(a) **October 17, 1997**

Finalization and Implementation of Regional Landscape Unit Planning Strategies

As the October 31, 1997 deadline for submission of Regional Landscape Unit Planning Strategies (RLUPS) draws near, region and district staff are requesting advice on key issues affecting the design and implementation of these important strategies. The following sections deal with the key issues that staff have raised to date.

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Contacts

For more information contact:	Allan Lidstone, MoF Ron Cotton, MoF Judy Godfrey, MELP

FOREST PRACTICES CODE

General Bulletin

Number 14 **October 13, 1998**

Terrain Stability Field Assessments for Operational Planning and Cutting Permit Issuance

(For Forest Development Plans Submitted On Or After October 15, 1998)

Background

Recent changes to the Operational Planning Regulation (OPR) has shifted the primary linkage that previously existed between terrain stability field assessments (TSFAs) and Forest Development Plans (FDPs). Rather than being required during preparation of the FDP, TSFAs are now linked to the ability to apply for a cutting permit (CP) and to prepare a silviculture prescription (SP).

In order to harvest, licence holders must work through three administrative stages: forest development plan; cutting permit; and silviculture prescription. The purpose of this bulletin is to provide Ministry staff with an understanding of the new relationships, effective October 15, 1998, between TSFAs and these three administrative stages.

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Contacts

For any questions regarding this administrative bulletin, please contact your **regional tenures officer** or one of the following:

Compliance and Enforcement Branch:

Dan Graham at Dan.Graham@gems7.gov.bc.ca

Resource Tenures and Engineering Branch:

Charlie Western at Charlie.Western@gems4.gov.bc.ca
Reg Brick at Reg.Brick@gems7.gov.bc.ca

General Bulletin

Number 15 **not dated**

Winter Roads

The code specifically provides for snow roads, but is not so clear on roads built with a mixture of snow and dirt and roads built completely with soil in the winter. The clauses of the *Forest Road Regulation* that deal with road construction apply equally to roads built in winter as they do to roads built in summer. However, it is apparent that different processes and measures are needed under such diverse operating conditions, while all such roads must still conform to the statutory requirements.

A draft document titled *Planning and Building Forest Roads for Winter Use in B.C.* has been prepared by the resource tenures and engineering branch. This document is intended for application, with care, by practitioners this winter, and should address most related issues and conflicts between industry and the regulatory agencies, including MOF. The document has been forwarded electronically to each MOF region and district, and hard copies are being sent to forestry associations. It is expected that districts will prepare sufficient photocopies for the use of local forest companies, particularly when the companies are not affiliated with associations.

The procedures contained in the document have been subject to review by selected MOF and forest industry personnel. However, it is vital that those building such roads be reminded that this document is intended to provide guidelines for ***consideration*** of applicability in local situations, rather than addressing specific hazards and consequences under those local conditions. It is not a textbook that details hard and fast rules for implementation. The proponents will be fully responsible for their actions, and should not consider that this publication will serve to defend any inappropriate applications of the construction practices covered. Only when the guidebook is completed should the information be considered as a best management practice. The interim document should be applied with caution.

The branch will be soliciting comments on the applicability and suitability of this document during the next several months. A revised version of the *Forest Road Engineering Guidebook* will incorporate input and any additional appropriate photographs.

Copies of this bulletin are also available on BBBULLET. Copies of *Planning and Building Forest Roads for Winter Use in B.C.* can be downloaded from the ministry's FTP server.

Further details and direction are available from:

Ron Davis at ???

General Bulletin

Number 16 **November 2, 1998**

Archaeological Impact Assessments

The Requirement for an Archaeological Impact Assessment (AIA)

As of June 15, 1998, amendments to provisions within the Operational Planning Regulation and the Forest Road Regulation regarding archaeological impact assessments (AIAs) are now in force.

Under s. 37(1)(e) of the Operational Planning Regulation the requirement for an AIA is no longer part of the FDP approval process, instead, a person preparing a silviculture prescription must carry out an AIA in situations where the district manager is satisfied that the assessment is necessary to adequately manage and conserve archaeological sites in the area. The AIA must be made available, upon request, to the district manager and the assessment must meet the requirements of the minister responsible for the *Heritage Conservation Act* (HCA).

Under s. 4(8) of the Forest Road Regulation a person must carry out an AIA in situations where the district manager is satisfied that the assessment is necessary to adequately manage and conserve archaeological sites in the area affected by the road or road work prior to undertaking road construction or modification. The assessment must meet the requirements of the minister responsible for the HCA. Under s. 6(4) of the Forest Road Regulation a professional forester must ensure that the AIA is carried out, that the road layout and design is consistent with the results and recommendations of the assessment, and must sign or seal a statement to that effect.

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General Bulletin

Number 16a **October 30, 2001**

Use of District Manager Authority to make Scenic Areas *known* and Establish Visual Quality Objectives

Introduction

The *Operational Planning Regulation* (OPR) provides two tools for managing visual resources: Scenic Areas and Visual Quality Objectives (VQOs). Scenic Area and VQO are defined in OPR Sec.1. Scenic Areas may be made *known* and VQO established through higher level plans (HLP) or by the district manager. Forest Practices Code Bulletins 6 & 7 spell out what is required by regulation, when these provisions are invoked. It is recognized that it would be preferable to identify and make scenic areas *known* and establish VQO through HLP. However, in many cases it may be necessary for the district manager to identify and make scenic areas *known* and establish VQOs prior to HLP being in place or in absence of direction from HLP.

The objective of this guide is to provide district managers with information on which to base their decision, as to which tool to apply, and how to make scenic areas known and establish VQOs in absence of higher level plans, or for HLP not providing direction for site specific VQO or scenic areas.

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General Bulletin

Number 17 **November 19, 1998**

Forest Service Road Maintenance - Winter 1998/99

Statutory Requirements

Under section 63(6) of the *Forest Practices Code of British Columbia Act*, the district manager has a responsibility to maintain forest service roads (FSRs) in accordance with the requirements of any forest development plan and the regulations and standards until the road is deactivated. The exception is under section 63(7) which enables the district manager to require the holder of a road use permit to assume all or part of the responsibility. Sections 16, 17 and 18 of the Forest Road Regulation specify the extent of the responsibility under that Regulation.

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General Bulletin

Number 18 **December 18, 1998**

Forest Practices Code Section 41(5) Approving Forest Development Plans After October 15, 1998

Introduction

This bulletin compares "total plan" versus "block by block" forest development plan approvals, and illustrates the proper application of section 41(5) of the *Forest Practices Code of British Columbia Act* (the "Code") with the intention of promoting consistency in the plan approval process.

Background

Prior to the Code coming into force in June, 1995, block by block approval of forest development plans ("FDPs") were standard procedure. This approach involved the approval of individual cutblocks, often with specific conditions being attached to each block. This was effective in some districts in that some degree of longer term development planning was achieved. However, in other districts the FDP evolved into an "amend and extend" document with an extremely limited planning horizon.

When the Code came into effect, mandating a five year planning horizon for the FDP, the block by block approval concept was to be replaced by "total plan" approval. In other words, if any one cutblock proposed in an FDP failed to meet the approval test set out in section 41 of the Code, the entire plan was to be rejected. The FDP was intended to be a logical and coherent plan for development of a ***forest***, not of a piecemeal series of cutblocks. However, without some provision for allowing new blocks to be introduced into the FDP each year in a manner which didn't require either outright rejection or approval, the "total plan" approach was found by most forest districts to be inflexible and unworkable. Accordingly, most forest districts continued to use the block by block approach to FDP approvals, relying on section 41(5) of the Code which deals with "approval subject to a condition." This resulted in a planning horizon that in certain areas of the province was less than the five years anticipated by the Code, with usually only the first one or two year's cutblocks being fully approved to proceed to the cutting permit application stage.

On June 15, 1998, a new Operational Planning Regulation ("OPR") was brought into force which, among other things, incorporated the "gating" concept. The intention behind gating is to permit full achievement of the five year FDP planning horizon, by providing the ability for plan proponents to introduce new cutblocks each year in a manner which

doesn't carry the threat of rejection of the entire plan. The idea is that an FDP will contain five years of approved category A cutblocks, and possibly a number of category I cutblocks.

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Section 41(5)

Section 41(5) of the Code provides that "*A district manager may make his or her approval of a forest development plan or amendment subject to a condition*."

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General Bulletin

Number 19 **December 8, 1998**

The Use Of Temporary Access Structures To Reduce Logging Costs

Introduction

This bulletin provides information on provisions in the Forest Practices Code supporting the use of temporary access structures. These provisions should be considered by forestry staff and statutory decision makers when preparing or reviewing and approving silviculture prescriptions.

The Code includes provisions that allow flexibility in the construction and rehabilitation of temporary access structures. The intent was to support cost-effective harvest methods that also ensure soil conservation objectives are met. This bulletin reviews these provisions and encourages their use on appropriate sites (i.e. where they don't conflict with known management objectives, where they don't create unacceptable risks to forest resources and where the soils are suitable for carrying out rehabilitation to restore site productivity).

Background

With the introduction of the Code, there has been a trend toward using high cost harvesting systems and methods to meet soil disturbance limits. Specifically, to achieve the maximum allowable soil disturbance limits for sites with moderate or high soil disturbance hazards, the trend is for operators to:

- construct fewer trails and use a less efficient network of skid trails,
- restrict operations to narrow seasonal windows to avoid creating dispersed soil disturbance between trails, or
- use more costly ground skidding or cable systems.

This bulletin reminds licensees and staff of a provision in the Code that was established to allow a person to temporarily exceed soil disturbance limits to construct temporary access structures which can later be rehabilitated to restore site productivity and to encourage the use of this provision to ensure logging operations are both economically efficient and environmentally acceptable.

Code Provision Allowing Maximum Soil Disturbance to be Temporarily Exceeded

Section 47 (2) of the *Forest Practice Code of British Columbia Act* allows a person carrying out timber harvesting operations to temporarily exceed the maximum amount of soil disturbance within the net area to be reforested (NAR) to construct temporary access structures, as long as:

- the maximum extent of this additional disturbance is specified in the silviculture prescription (as per OPR39(3)(j));
- the temporary access structures are approved in the prescription; and
- the prescription provides for their rehabilitation, i.e., the maximum time required to complete the rehabilitation must be specified (as per OPR39(3)(l)).

The amount of temporary disturbance resulting from these additional structures must be within the limit specified in a silviculture prescription. Allowing soil disturbance limits to temporarily be exceeded, by an amount up to 5% of the NAR for the standards unit, should be adequate to provide for economically efficient harvesting operations.

Temporary access structures must be constructed and rehabilitated in a manner that prevents soil from being deposited in streams, minimizes erosion, maintains surface drainage patterns and restores soil productivity. Approving silviculture prescriptions that allow maximum soil disturbance limits to be exceeded temporarily by up to 5% and ensuring that these structures are constructed and rehabilitated in accordance with Code requirements should provide:

- reasonable opportunities to carry out economically efficient timber harvesting,
- adequate conservation of soil resources, and
- adequate protection of environmental values.

To ensure that the appropriate balance is achieved with respect to the attainment of the economic, social and environmental objectives for forest resources, it is essential that licensees and government staff utilize the provisions in the Code that provide opportunities to manage risk, such as the one described in this bulletin.

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General Bulletin

Number 20 **May 25, 1999**

Cutblock Size

Introduction

Review of harvesting practices in British Columbia has revealed that cutblocks are frequently much smaller than the maximum sizes prescribed in the *Forest Practices Code's Operational Planning Regulation*. This pattern has lead to an increase in the development of small cutblocks, which, when combined with constraints on harvesting adjacent cutblocks, has significantly increased logging costs and may be impacting timber supply. Furthermore, if this trend leads to increased habitat fragmentation and active roads, the outcome is usually not desirable for wildlife, fish and water quality.

Although there are circumstances where small cutblocks may be required to adequately manage and conserve forest resources, there is a perception that the intent of the Code is to increase the number of small, dispersed cutblocks. This is not the case. The Code contains a number of provisions that allow considerable flexibility in designing cutblocks. The purpose of this letter is 1) to describe the intent of the Code regarding cutblock size, 2) to identify the provisions that allow for flexible implementation of the Code, 3) inform statutory decision makers on their authority to accept cutblocks that are consistent with the requirements of the Code and 4) provide licensees with a better understanding of Code regulations regarding cutblock sizes.

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Pages 131 through 134 redacted for the following reasons:
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General Bulletin

Number 21 **July 5, 1999**

Licensee Compliance with Road Maintenance Requirements

Introduction

Several districts have requested advice as to what they can enforce with respect to a licensee's road maintenance program. The Code has placed the responsibility for determining road problems and remedial measures squarely with the holders of permits related to road use (road permits, road use permits and cutting permits). Therefore, our responsibility is that of enforcing compliance with the forest road regulation, not establishing suitable maintenance practices.

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Pages 137 through 139 redacted for the following reasons:
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General Bulletin

Number 22 **September 1, 1999**

"Area Under the Plan" for Forest Development Plans

Introduction

The "area under the plan" should provide the statutory decision maker (SDM) and the public with a clear understanding of the extent of lands considered in preparing a forest development plan (FDP) and, once defined, it is also used to apply provisions of the Forest Practices Code of British Columbia Act (FPC).

There has been much debate about what "area under the plan" is. This bulletin attempts to describe it as it is most commonly understood and distinguish it from other "areas" that are referred to in forest legislation.

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Pages 142 through 145 redacted for the following reasons:
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General Bulletin

Number 23 **October 7, 1999**

Cutblock Transition to "Category A" Status on Forest Development Plans

Introduction

Based on amendments to the operational planning regulation (OPR) effective June 15, 1998, forest development plans (FDPs) submitted on or after October 15, 1998, must include the "approximate location of cutblocks proposed to achieve Category A status" and may also include "Category I" cutblocks (optional). Before that date, legislated Category A cutblocks did not exist. Therefore, a transition period was needed to ensure that cutblocks shown on FDPs submitted prior to October 15, 1998 (and approved before or after October 15th) would retain their "approved" status under the new rules. The key section that speaks to this is OPR23 - "Transition."

OPR23 allows for cutblocks in FDPs submitted before October 15, 1998 to be deemed "Category A cutblock status" if they meet one of the following three conditions:

1. they have a cutting permit;

2. they have a silviculture prescription (SP) or exemption from the requirement for an SP; or,

3. an SP has been submitted and it meets all of the following map and information requirements:

    - OPR18(1)(t)measures to reduce significant forest health risks;
    - OPR18(1)(u)general objectives for coarse woody debris & wildlife trees;
    - OPR18(1)(v)general objectives for riparian management zones;
    - OPR18(1)(w)known objectives for known ungulate winter ranges; and,
    - OPR18(1)(x)known water quality objectives for community watersheds.

As these requirements are met, eligible cutblocks achieve deemed Category A status for transition purposes during the life of the FDP. This status is confirmed when the next FDP, in which deemed Category A cutblocks first appear, is approved by the DM. To

ensure the FDP can be approved, the proponent should only include cutblocks that are identified as Category A cutblocks if those cutblocks clearly meet the requirements of OPR23. Failure to meet OPR23 requirements for any deemed Category A cutblock will result in the DM not being able to approve the plan. It is important, therefore, that the proponent communicate with the DM prior to FDP submission if there are any doubts about a specific block not meeting the criteria.

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General Bulletin

Number 24 **March 7, 2000**

Strategic Land Use Plans

Purpose of this Bulletin

This Bulletin provides guidance for statutory decision-makers regarding the appropriate consideration of approved strategic land use plans through the:

- preparation of operational plans by licensees and others, and
- approval of operational plans by statutory decision-makers.

What are Approved Strategic Land Use Plans ?

Approved Strategic land use plans (SLUPs) include regional plans, Land and Resource Management Plans (LRMPs) and special strategic land use decisions (e.g. for spotted owls). SLUPs are prepared through extensive stakeholder and inter-agency consultation, often involving several years of effort. Cabinet approves strategic land use plans with formal transmittal letter from the three ministers: Forests (MOF); Environment, Lands and Parks (MELP); and Energy and Mines (MEM).

A list of SLUPs is available from the Land Use Co-ordination Office (LUCO) website.

Components of Strategic Land Use Plans

There are two distinct components of approved SLUPs:

1. **Higher Level Plan (HLP) Component**
   The Code enables the three ministers to establish the objectives of an SLUP as an HLP. Operational plans under the Code must be consistent with any HLP(s) in effect.

2. **Non-Higher Level Plan Component**
   Although cabinet approved SLUPs constitute a land use decision, there is no legal requirement that operational plans be consistent with SLUPs that have not been declared an HLP. Non-HLP components of an SLUP is information that should be considered in the preparation and approval of operational plans.

In summary, the only mechanism set up in the *Forest Practices Code of British Columbia Act* to implement SLUPs is the HLP.

Below is a description of both components of SLUPs. This guidance will also be referenced in the following documents:

- *Higher Level Plans: Policies and Procedures* (HLP:P&P)
- *Administration of Forest Operational Plans* (AFOP)
- Forest Practices Code Bulletin: The Application of Section 41(1)(b) of the Forest Practices Code of British Columbia Act

Higher Level Plan Components

Through the establishment of HLPs, SLUPs can legally influence forest practices under the Code. This is normally accomplished by having the three ministers (MOF, MELP, and MEM) legally establish resource management zone (RMZ) objectives. The objectives should clarify general direction in the SLUP, pertain to forest resources, be relevant to Code operational plans and vary from normal Code management.

Landscape unit objectives, other HLPs and operational plans **must not** materially conflict with legally established RMZ objectives. This ensures that appropriate components of SLUPs become part of the legal regulatory framework of the Code over a specific area.

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Non-Higher Level Plan Components

SLUPs may contain information that should be considered in the preparation and approval of a Code operational plan but is not desirable to establish as a resource management objective.

This includes resource information, general management direction, and a variety of resource management objectives and strategies that have not been established as an HLP. Statutory decision-makers (SDMs) for operational planning should consider the guidance from SLUPs in relation to local circumstances and potential application for operational plans in their districts.

Considering the SLUP guidance does not mean the SDM must adopt it. The SDM must decide how much weight to give these components of an SLUP in determining whether the proposed operational plan satisfies the second half of the two part test for plan approval set out in section 41(1) of the Code.

Section 41(1)(b) of the Code states that a district manager must be satisfied that the operational plan or amendment will adequately manage and conserve the forest resources of the area to which it applies. One of the considerations in meeting the approval test can be the guidance provided by the SLUP. But SDMs do not have the legal authority to require implementation of a non-HLP SLUP component because they feel it provides for better management than current Code standards. Implementation of a non-HLP SLUP component should be based on a structured and defensible assessment of risk to the resource considering circumstances and evidence specific to the area under the proposed plan. A separate bulletin on the application of s.41(1)(b) of the Code (see references) provides more detail on the use of risk analysis in this context.

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General Bulletin

Number 25 **June 22, 2000**

Requirements for Consistency between Forest Development Plans and Higher Level Plans

Introduction

Forest Practices Code (FPC) General Bulletin #24 – Strategic Land Use Plans describes how declaring specific sections of a strategic land use plan (SLUP) as a higher level plan (HLP) creates a legal obligation for operational plans to be consistent with those SLUP sections. Determining when this newly created HLP becomes effective is the subject of this bulletin.

When an HLP* is established, it may overlap an area subject to forest development in the form of:

1. active forest development planning;
2. proposed category A cutblocks/roads;
3. approved category A cutblocks/roads subject to limited protection (Section 21 of the Operational Planning Regulation [OPR21]); or,
4. approved category A cutblocks and approved roads subject to full protection (OPR22).

This bulletin will discuss the implications of an HLP being established during these stages with emphasis on the latter three.

**See the last section of this document for a complete list of the types of areas eligible for HLP status.*

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General Bulletin

Number 26 **October 16, 2000**

Enforcement of Seed and Vegetative Material Transfer

Introduction

The seed and vegetative material transfer guidelines are described in the Seed and Vegetative Material Guidebook. Seed and vegetative material will be referred to as "seed" in the remainder of this document. The seed transfer guidelines specify a geographic range within which a specific seedlot is suitable for planting. Outside of this range the performance or genetic adaptability of a particular seedlot may be severely reduced, thereby increasing the level of associated risk and/or damage to the plantation.

This bulletin should not be interpreted as ministry policy or legal advice and should not be used in place of the Forest Practices Code of British Columbia Act, the Forest Act or their associated regulations.

> The intent of this bulletin is to offer guidelines for the enforcement of seed transfer requirements. Guidelines in this document are not intended to describe or limit the matters that may be taken into account by a statutory decision maker when approving seed transfer variances for tree planting that has not yet occurred.

Legislation

The Silviculture Practices Regulation states, "A person... who carries out planting... must not exceed the limits for seed or vegetative material transfer specified in the Ministry of Forests' publication Seed and Vegetative Material Guidebook". Prior to June 15th 1995 the regulations stated that seed of a provenance adapted to the area must be used. Since June 15 th, 1995 the guidebook has been specifically referenced in the regulation.

> Since June 15 th, 1995 it has been mandatory to comply with the transfer guidelines in effect at the time of planting unless the transfer is authorized prior to planting by the district manager or a person delegated by the district manager.

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General Bulletin

Number 27 **October 19, 2000**

Enforceability of Free Growing Obligations on Pre-Code Prescriptions

Introduction

In 1987 legislation was introduced which obligated the holder of a major licence, at his own expense, and in accordance with the regulations and pre-harvest silviculture prescription to carry out basic silviculture. Early legislative requirements were somewhat vague in terms of free growing criteria and a series of legislative amendments have added to the complexity of administering these prescriptions.

The purpose of this bulletin is to:

1. Provide a brief history of the legislation and amendments that are pertinent to the obligation of basic silviculture. This summary will emphasize critical points only. It will not provide a detailed account of the legislation and all of the amendments that occurred during this period.

2. Inform statutory decision-makers of their authority with respect to early silviculture prescriptions.

3. Provide licensees with a better understanding of their obligations with respect to areas harvested under early legislation.

History of Legislation

Forest Amendment Act (No. 2), 1987 as retroactively amended by Forest Amendment Act (No. 2), 1993:
This legislation defines basic silviculture and a free growing crop. The legislation also established the obligation for a "major licence" holder to, at his own expence, and in accordance with the regulations and a pre-harvest silviculture prescription, carry out basic silviculture on the land from which the timber was harvested.

Basic silviculture is defined to mean harvesting methods and silviculture operations and other operations that:

1. are for the purpose of establishing a free growing crop of trees of a commercially valuable species, and

2. are required in a regulation, pre-harvest silviculture prescription or silviculture prescription.

This legislation required compliance with prescriptions approved on or after December 17, 1987. If harvesting of timber was completed after September 30, 1987 but before December 17, 1987, basic silviculture was required to be carried out in accordance with directions of the Chief Forester.

Silviculture Regulation in effect April 8, 1988

The 1988 Silviculture Regulation defined a "prescription" as a pre-harvest silviculture prescription and a silviculture prescription. The regulation defined concepts such as "regeneration delay" and "target number" as well as providing a detailed list of prescription requirements. The regulation provided a default of 2 metres for the horizontal distance between well-spaced trees, also known as the minimum inter-tree distance (MITD), and specified the requirement for including a crop tree to brush ratio within a radius of one metre of the trunk of the crop tree.

1994 Silviculture Practices Regulation in effect February 7, 1994

The 1994 regulation retained the requirement to specify an MITD between trees but the default of 2 metres was removed. This regulation introduced the requirement to specify a minimum height for the crop tree and also required that a minimum number of the "preferred species" be specified in the prescription.

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FOREST PRACTICES CODE

General Bulletin

Number 28 **November 10, 2000**

Target Stocking Requirements and Silviculture Treatment Regimes

Subject

This bulletin addresses the requirement for managing to target stocking, the "regime of silviculture treatments" required under section 11 of the Silviculture Practice Regulation (SPR), and associated issues.

Issue

Silviculture prescription (SP) content requirements include a target stocking standard. Clarification is required on what the requirements are with respect to managing for target stocking, how this has changed over time, the enforceability of this standard, and the expectations for the "regime of silviculture treatments".

Target Stocking

Target stocking is defined as the number of well-spaced preferred and acceptable trees per hectare that will, under normal circumstances, produce an optimum free growing crop. Significant volume reductions are projected if stands are managed to minimum rather than target stocking. For example, WINTIPSY projections for lodgepole pine based on well-spaced trees at 2.0 metres, site index 18, grown to age 67 indicates 20 to 30% volume reductions at minimum versus target stocking. It should be noted, however, that projected volume differences will vary with species, site index, total trees, and rotation age.

IssueHistory

October 1, 1987 to February 7, 1994
(Reference: Silviculture Regulation, 1988)

> From October 1987 to February 1994 the legislation required the establishment of a free growing stand to SP standards [SPR2(1)(a)]. The SP content requirements included specification of planned silviculture treatments as well as alternative treatments in the event of reasonably foreseeable treatment failures [SPR2(1)(a)]. There was no explicitly stated requirement to ensure that the specified treatments must have a reasonable likelihood of meeting target stocking. However, the legislation required a target stocking level be stated in the SP. It was presumed that the treatments would be designed towards meeting this target. Once the SP

was approved the licensee was obligated to follow the prescribed treatments in the SP. The legislation is clear that enforceability of stocking standards is based on whether or not minimum stocking had been achieved [SPR6(d)&6(g)].

February, 1994 to July, 1995

(Reference: Silviculture Practice Regulation, February, 1994)

The 1994 SPR introduced a requirement that the SP must demonstrate the free growing crop would be established to the specified target standards [SPR10(a)]. The SPR maintained the requirement to specify silviculture treatments including alternative treatments where appropriate [SPR11(m)]. While the licensee was obligated to carry out these treatments designed to meet target stocking [SPR18], the legislation was clear that the legal requirement was to achieve minimum stocking [SPR22(1)(a) & (1)(b)].

The SPR also introduced a requirement to prepare and submit an amendment if it became foreseeable that carrying out the silviculture operations in the SP would not ensure meeting at least the minimum stocking requirements (SPR27).

The regulation also introduced the minimum height requirement for free growing trees [SPR11(2)(h)(i)]. Minimum heights create a strong incentive to manage towards target stocking. If stocking is close to target there is a significantly increased probability of tallying a sufficient number of well-spaced stems of the required minimum height in a shorter time frame than at minimum stocking. For a plantation at minimum stocking, sufficient time must be allowed for each well-spaced tree to exceed the height threshold.

July, 1995 to June 15, 1998

(References: Forest Practices Code of British Columbia Act and Silviculture Practices Regulation)

The Act and SPR maintained the same requirements established under the previous regulation. The requirement to specify a regime of silviculture treatments designed to meet the target stocking requirement was more clearly stated [SPR51(1]. The holder of a SP was obligated to follow the prescription and carry out the prescribed silviculture treatments [FPC70(2) &(3)]. The legal requirement to achieve minimum stocking remained unchanged [FPC70(4)(d) & (e)].

Post June 15, 1998 - "Results Based" SP

(References: Forest Practices Code of British Columbia Act and Silviculture Practices Regulation)

With amendments to the Act in 1998 the requirement for specifying silviculture treatments in the SP was discontinued. A person who, after

June 15 1998, is required to establish a free growing stand on an area under a SP is now required under section 11 of the FPC SPR to:

1. Retain an RPF to specify a silviculture regime that can reasonably be expected to produce target stocking levels and,

2. To implement this regime.

Confusion has arisen as to whether target stocking must actually be achieved. This has been caused by the revised wording in FPC70, which refers generically to achieving the SP stocking requirements, which includes target stocking. The revised wording emphasizes the intent of managing for target. However, it does not establish a legal requirement to achieve target stocking. The actual stocking obligation remains unchanged - i.e. the SP holder must achieve at least the minimum stocking standard. However, the RPF specifying the silviculture regime is professionally accountable for prescribing a regime that can reasonably be expected to achieve target stocking and the licensee is legally obligated to follow the regime.

The target stocking requirement cannot be enforced through legislation as this would render meaningless the requirement to achieve minimums. Also by definition a target is something to strive for, but not necessarily achieve. Further clarification is provided in OPR39(1)(a)(iii) and (iv). Subparagraph (iv) refers to the minimum "species required per hectare", whereas, subparagraph (iii) (the target provision) refers to the "species per hectare", omitting any reference to target stocking being a requirement.

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General Bulletin

Number 29 **December 6, 2000**

Preparation of Silviculture Prescriptions for Emergency Situations

Introduction

This bulletin has been prepared to assist the district manager and is designed to provide advice related to the best available information for SP preparation, where emergency harvesting is required. Circumstances exist that limit the quality of information being used at the time of SP preparation and approval. This advice is meant to apply under only those limited circumstances where an emergency may have restricted the normal planning expectations – it must not be used as an excuse for poor planning.

For example, in years of severe bark beetle infestation, one of the tools used to manage these population explosions is initial attack strategies which involve timber harvesting. New areas of beetle infestation do not become known until the late summer or fall after a forest health survey has been completed. The identification of beetle infested areas in late summer of fall will often limit field collection data for SP preparation.

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General Bulletin

Number 30 **December 14, 2000**

Use of the Term "Practicable" Under the Forest Practices Code

Over the last several years there have been differing opinions on how to interpret the term "practicable" where it appears in the Forest Practices Code (Code)[1]. This term is often confused with the term "practical" so it is important that both be defined and explained in order to allow Statutory Decision Makers (SDMs) to make consistent decisions around these terms.

Generally, according to case law, "**practical**" relates to usefulness and cost while "**practicable**" requires balancing all the relevant circumstances.

Part of the problem is that the meanings overlap so that often the "practical" way of doing something is the same as the practicable way. In other words, often the cheapest and most useful (to the licensee) way of doing something is also acceptable even taking into consideration all the relevant factors (which in the case of the Code includes conservation).

However they are not always the same because the "practicable test" requires that all relevant circumstances be considered - not just usefulness and cost - although those are themselves two of the relevant factors to be considered when using the "practicable" test.

A person who has to determine whether something is the only practicable way of proceeding has to determine whether that is the only feasible way of proceeding bearing in mind all the relevant circumstances. For meeting the test of practicable under the Code, the kind of circumstances that are relevant can be determined by looking at the preamble. The preamble explicitly refers to economic as well as conservation and other values. The SDM's challenge is to balance competing values to come up with a permissible activity.

[1] This term is relatively rare in the Code. Its main use is in the Forest Road Regulation
where it appears five times.

Example 1:

Section 4(2) of the Forest Road Regulation states:

> *"A road must be located outside a riparian management area, except for crossings, unless in the opinion of the district manager,*

a. *no other practicable option exists, or*

b. *locating the road outside the riparian management area will create a higher risk of sediment delivery.*

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All relevant factors have to be balanced. Look to the preamble to determine the relevant factors. It may be that not everything mentioned in the preamble is relevant in a given case, but usually conservation will be relevant.

Example 2:

Section 11(1)(b)(i) of the Forest Road Regulation states:

"A person required to construct or modify a road in compliance with section 62(1) of the Act must do all of the following when clearing the clearing width:

a. ;

b. in areas where felled trees could reach streams or lakes

i. *directionally fell trees away from the stream or lake, unless that is the only practicable way the timber can be felled, and"*

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Appendix 1 - Preamble to the Code

Preamble

WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;

AND WHEREAS sustainable use includes:

a. managing forests to meet present needs without compromising the needs of future generations,

b. providing stewardship of forests based on an ethic of respect for the land,

c. balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,

d. conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and

e. restoring damaged ecologies;

General Bulletin

Number 31 **December 19, 2000**

Amendments to Forest Development Plans

Introduction

The *Forest Practices Code of British Columbia Act* (FPC) authorizes holders of forest development plans (FDPs) to propose amendments to those plans under FPC34. Depending on the nature of the amendment, the proponent should request the district manager (DM) or DM and designated environmental official (DEO), in joint approval areas, to approve the amendment under one of 4 following sections of the FPC:

FPC40 Authorizes statutory decision makers (SDMs)[1] to give effect to FDPs and amendments prepared by the DM. Amendments given effect under this section are considered "major"[2] because they require a 60 day review and comment period prior to submission for approval.

FPC41(1) Authorizes SDMs to approve FDPs and amendments prepared by forest tenure holders. Amendments approved under this section are also considered "major" for the same reason.

FPC42 Authorizes the SDMs to approve or give effect to FDPs and amendments to address an emergency. This section of the FPC is beyond the scope of this bulletin.

FPC43 Authorizes the SDMs to approve or give effect to FDP amendments prepared by the DMs or forest tenure holders without a 60 day review and comment period (if the amendment does not materially change the objectives or results of the plan). This is a minor amendment that can be submitted and approved without providing for review and comment.

[1] The term "SDM" includes the District Manager for the Ministry of Forests, the Designated Environmental Official for the Ministry of Environment, Lands and Parks as well as delegates designated by either of these two positions. SDM only means the District Manager or his/her designate when joint approval is not required.

[2] There is no basis for the terms "minor" and "major" amendments in the legislation (although "minor" is in the title of FPC43), however, they are useful

administrative terms
that are in common use.

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General Bulletin

Number 32 **February 06, 2001**

Making Information "Known"

This bulletin is designed to provide supporting advice for the district manager (DM) and the designated environment official (DEO) in their role in identifying or making information "known". Due to the significance of "known" information, the Ministry of Forests (MoF) and the Ministry of Environment, Lands and Parks (MELP), at the district level, should consider meeting and formally establishing a common understanding and approach for working together to make information "known".

The term "known" is defined in the Forest Practices Code Operational Planning Regulation as;

> "known" means, when used to describe a feature, objective or other thing referred to in this regulation as "known", a feature, objective or other thing that is:
>
> a. contained in a higher level plan, or
>
> b. otherwise made available by the district manager or designated environment official at least 4 months before the operational plan is submitted for approval.

"Known" information should be considered a subset of "best available " information and only certain categories of information can formally be made "known" under the authority of various regulations.

For example, Section 18(1) of the Operational Planning Regulation (OPR) states:

> **18** (1) A person must ensure that a forest development plan includes the following information for the area under the plan:
>
> (e) the following known items:
>
> (x) community watersheds

And Section **18**(1)(x) states:

> (x) for community watersheds, the known water quality objectives

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FOREST PRACTICES CODE

General Bulletin

Number 33 **March 5, 2001**

Coarse woody debris in relation to residue and waste assessment, and cut control

Purpose

To clarify the application of the short term strategy for coarse woody debris (CWD) in relation to residue and waste assessment, and cut control.

Background

CWD management is a legislative requirement under the *Forest Practices Code of British Columbia Act*. For operational purposes CWD is defined as downed woody material greater than 10 cm in diameter. CWD can be in all stages or decay and consists of above ground logs, bucking waste, tops, exposed roots and large fallen branches. CWD provides ecological, structural and functional roles for a forest stand. This includes provision of habitat for many vertebrates and invertebrates, a source of shade and moisture, and ultimately additions to the soil in terms of nutrients and organic matter. These CWD functions can not be fulfilled unless there is appropriate distribution of piece sizes and decay classes throughout the cutblock. Wood piled at the landing does not contribute significant ecological benefit.

In March 2000, the Ministries of Forests and Environment, Lands and Parks, announced a short term strategy for CWD that would maximize the ecological value of the CWD left on site considering the timber utilization standards and the avoidable waste benchmarks. The strategy allows for either qualitative or quantitative objectives for CWD in forest development plans, silviculture prescriptions (SPs) or woodlot licence site plans. Qualitative objectives focus on the appropriate distribution of debris throughout the cutblock. Quantitative objectives define the amount of CWD that should be left on a cutblock, either in terms of volume and/or number of pieces of appropriate size, as well as discussion of appropriate distribution. The short-term strategy will be assessed within three years and modified as required.

Definitions:

Coarse woody debris left on site post harvest is made up of:

Residue - the wood for which utilization is optional under a timber harvesting agreement (licence or permit). No monetary charges apply to this volume of wood. The volume of residue wood (avoidable and unavoidable) is charged to cut control.

Waste - the wood for which utilization is mandatory under a timber harvesting agreement (licence or permit). Waste wood that is avoidable is subject to monetary charges. Currently, this wood is also subject to avoidable waste benchmarks contained in a

temporary policy amendment, that provides some relief to the volume of avoidable waste that is subject to monetary charges. All waste wood volume (avoidable and unavoidable) is charged to cut control.

Unavoidable residue and or waste are volumes which cannot be removed because of physical impediments, for safety considerations, for environmental reasons, or for other reasons beyond the control of the licensee. All other volumes are avoidable.

Debris - the wood not covered by residue and waste. It is not measured in a residue and waste survey, and, is below mandatory and optional utilization. No monetary charges apply to this volume of wood and it is not charged to cut control.

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General Bulletin

Number 34 **March 1, 2001**

Evaluation of Forest Health in Free Growing Assessments

Introduction

Holders of a silviculture prescription (SP) are required to establish a free growing stand of healthy trees. This bulletin has been prepared to assist a district manager (DM) make determinations on forest health requirements of a free growing stand. Specifically, the bulletin addresses the following questions:

1. What are the forest health requirements of an SP?
2. When assessing free-growing status which forest health criteria are used, those in place at the time the SP was approved or the current criteria?
3. Can a DM require a licensee to delay a free growing declaration if a stand is in the free growing assessment window and meets all of the forest health related stocking requirements?

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Pages 209 through 210 redacted for the following reasons:
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FOREST PRACTICES CODE

General Bulletin

Number 35 **April 4, 2001**

Soil rehabilitation requirements for temporary access structures, compacted areas, and corduroyed trails

Introduction

This bulletin provides advice to district managers on Forest Practices Code of BC Act requirements related to the rehabilitation of temporary roads and pits, as well as compacted areas and corduroyed trails. It is intended to address compliance and enforcement issues that may arise from the elimination of soil rehabilitation plans for these areas.

Background

On July 1, 2000 the requirement for soil rehabilitation plans under section 31 of the Silviculture Practices Regulation (SPR) was amended. This amendment eliminated the requirement to have an approved soil rehabilitation plan in place before carrying out required rehabilitation of any temporary access structure road, borrow pit or gravel pit (as per section 47(6) of the Forest Practices Code of British Columbia Act (Act)), as well as any corduroyed trail or compacted area (under section 47 (7)). Soil rehabilitation plans are still required for excessively disturbed areas covered under sections 46(4) or 47(5) of the Act.

Issues

Consequential to the elimination of soil rehabilitation plans, amendments to the Timber Harvesting Practices Regulation (THPR) are under development to address rehabilitation requirements for roads and pits that are temporary access structures, and corduroyed trails or compacted areas. However, until these changes have been put into effect there are no specific regulation requirements on how rehabilitation under section 47(6) and (7) of the Act must be carried out on these type of areas. Note that rehabilitation treatments required for temporary access structure landings and excavated or bladed trails are currently provided in the THPR.

Pages 212 through 213 redacted for the following reasons:
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General Bulletin

Number 36 **March 30, 2001**

Requiring Rehabilitation of Damaged Areas

Introduction and scope

This bulletin contains advice on applying section 48 of the Forest Practices Code of BC Act (Act), which allows the district manager to require rehabilitation on areas that have sustained damage as a result of a forest practice. The district manager, as statutory decision maker, must apply discretion when making decisions under section 48, and as such, the bulletin is intended to provide general guidance only.

Section 48 has been identified as a potentially useful legislative tool for requiring remediation of some areas that have suffered detrimental soil disturbance, that may not be covered by other provisions of the Code. Generally, maximum soil disturbance limits must now be averaged over an entire standards unit (see Compliance and Enforcement Advice bulletin 6), which may not address areas of localized and concentrated soil disturbance. These disturbed areas can adversely impact site productivity and drainage, regardless of whether soil disturbance limits for the standards unit are exceeded or not. For this reason harvesting and silviculture operations should avoid causing concentrated areas of soil disturbance, or if they are unavoidable those conducting the operations should be prepared to rehabilitate these areas.

This bulletin is mainly focussed on providing advice for identifying and assessing areas of potentially damaging soil disturbance; however, it is recognized that section 48 could be applied in situations where damage has occurred to other resource values, as well.

Legislation

Forest Practices Code of BC Act, Section 48:

(1) If the district manager determines that the area under an operational plan has sustained damage as a result of a forest practice, the district manager may, by written notice, direct the person responsible for the damage to take measures and to pay costs that are necessary to rehabilitate the area to the satisfaction of the district manager and the person must comply with the notice.

(2) Subsection (1) applies despite any limit for soil disturbance specified for an area under a silviculture prescription or stand management prescription.

Use of this section requires the district manager to determine two key items: a) whether damage has occurred, and b) whether the damaged area is suitable for rehabilitation.

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FOREST PRACTICES CODE

General Bulletin

Number 37 **April 12, 2001**

Legislation Governing Harvesting and Bark Beetle Control

Introduction

The purpose of this bulletin is to clarify the Ministry of Forests' legislation and administrative policy relating to timber harvesting to control bark beetle infestations. The natural cycle of bark beetles, particularly the timing of tree attack, creates inherent difficulties in applying the legislation and supporting administrative processes. Increasing bark beetle infestations test the ability of the Ministry to balance the need to protect the forest from damage with the need to maintain a dependable framework of forest development planning.

Co-operation between the Ministries of Forests and Environment, Lands and Parks and all forest licensees is the cornerstone in using timber harvesting as an effective treatment to respond in a timely manner to growing bark beetle infestations

Occasionally there is a need to have specific stands of timber harvested as soon as possible in order to control bark beetles infestations. Much of this harvesting will normally involve existing licensees, including the Small Business Forest Enterprise Program (SBFEP) and the Small Scale Salvage Program (SSSP), in which case the best option is to plan and encourage co-operation with the licencees to change their areas of operation in order to facilitate rapid harvesting.

The issues and recommendations provided in this bulletin apply only where, in the opinion of the district manager, constructive planning with the licensees is not adequate to achieve control of bark beetles. The recommendations generally apply to volume based Forest Licence (FL) tenures and discusses related TSL's issued as tools under sections 20, 23, 72 and 73 of the Forest Act. The holders of area based tenures, such as Tree Farm Licences and Woodlot Licences are responsible for all treatments related to timber damage on their respective land bases.

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FOREST PRACTICES CODE

General Bulletin

Number 38 **April 20, 2001**

Amendments to Range Use Plans

Introduction

Nothing in this bulletin should be taken as a direction to Statutory Decision Makers (SDMs)[1].

The *Forest Practices Code of British Columbia Act* (FPC) authorizes holders of range use plans (RUPs) to propose amendments to those plans under FPC34. Also, under FPC35, the holder of a RUP must submit an amendment or new plan if the current plan is unlikely to succeed.

The district manager (DM) can require an amendment to a RUP or a new plan if they determine that special circumstances (FPC35 (3)) warrant the change or if the plan is found to be inconsistent with new information such as new objectives, strategies or measures (OPR54.1).

Depending on the nature of the amendment, the proponent should request the DM to approve the amendment under one of the following sections of the FPC:

FPC40 Authorizes SDMs to give effect to RUPs and amendments prepared by the DM.

FPC41 (1) Authorizes SDMs to approve RUPs and amendments prepared by range agreement holders.

FPC43 Authorizes SDMs to approve or give effect to RUP amendments without a 30 or 60 day review and comment period. If the amendment does not materially change the objectives or results of the plan, then it is a minor amendment that can be submitted and approved without providing for review and comment.

FPC44 Authorizes SDMs to approve RUP amendments without a 30 or 60 day review period for an area that is subject to temporary grazing permit or temporary hay cutting permit, if they determine that the amendment meets the requirements of the Act, regulations and standards, and will adequately manage and conserve the forest resources of the area to which it applies.

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Approving a minor amendment

The first two tests in FPC43 are similar to those for approving the RUP under FPC41. The last test states "the amendment does not materially change the objectives or results of the plan." For this test, it is recommended that the SDM carry out the following 3 steps:

(1) Determine the anticipated results of the current plan for the portion of the RUP being amended. The SDM should consider the strategies expressly required in OPR52.2 and 52.3.
(2) Determine what the anticipated results of the amendment are.
(3) Determine or define what constitutes a "material change" (see below).

After this is done, the SDM can then determine if there is, or is not, a material change to the objectives or results of the RUP as a whole. If there is a material change, the amendment cannot be approved under FPC43 and will need to be advertised.

Defining "materially change"

"Material" is defined in the dictionary as substantial or important. Something is material if it would cause a reasonable person to change his or her decision.

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Free Growing Declarations
July 2004

Introduction

The purpose of this bulletin is to provide information and guidance regarding the administration of free growing declarations[1] by licensees and BC Timber Sales (BCTS) managers.

Electronic submissions to the Ministry of Forests (MOF) are part of a province-wide initiative of the BC government to improve service delivery through the use of electronic business mediums. The MOF, within its e-Forest Management (e-FM) initiative, identified electronic submissions of regulated information (e-Submissions) as a means of streamlining business with government in order to decrease costs to industry as well as government.

The Land Information BC Electronic Submission Website provides licensees and BCTS managers with the ability to submit free growing declarations to the district manager. Free growing declarations are uploaded into the Reporting Silviculture Submission and Landstatus Tracking System (RESULTS). Declarations can also be entered directly into RESULTS by using the milestone function. Electronic declaration submissions (e-declarations) will replace the previous paper-bound method.

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Contacts
For any questions regarding this bulletin, please contact:

Forest Practices Branch:
Paul Rehsler at (250) 387-8908 or Paul.Rehsler@gems9.gov.bc.ca

Compliance and Enforcement Branch:
John Harkema at (250) 356-5412 or John.Harkema@gems3.gov.bc.ca

Information Management Group
John Gallimore at 356-6986 or John.Gallimore@gems5.gov.bc.ca

Example District Manager Letter Acknowledging Receipt of A Free Growing Declaration

File: 18750-20/
18780-20/Licensee

Date

Company Representative
Some Company Forest Products Limited
Address

Dear Company Representative:

The Ministry of Forests has recieved free growing reports submitted by [*Some Company Forest Products Limited*] for the following blocks:

Tenure	Opening No.	Received Date

I acknowledge receipt of the declarations made pursuant to section 107 of the *Forest and Range Practices Act*.

Yours truly,

District Manager

FOREST PRACTICES CODE

General Bulletin

Number 40 **July 17, 2001**

Submission of Free Growing Reports by Standards Unit

Introduction

The Silviculture Practices Regulation (SPR) provides a framework for monitoring and reporting the achievement of a silviculture prescription (SP) holder's obligation to establish a free growing stand on those portions of the area under the prescription that are within the net area to be reforested (NAR). A survey, within the free growing assessment period, containing sufficient information to enable the district manager to determine if the stand meets the free growing standards specified in the prescription is required. When a standards unit (SU) can be identified as a separate stand, and this stand has met the free growing requirements in the SP, then the SP holder has fulfilled the silviculture obligation for that portion of the block. With respect to the formal free growing declaration, if all of the free growing requirements on one, two or more SUs described in the SP have been met, the SP holder may, in some circumstances, declare a SU free growing before the remainder of the cutblock is free growing.

Justification and Authority

The following sections of the SPR apply:

- SPR section 23 (1) (c) requires the licensee to conduct a survey that enables the district manager to determine if the stand meets the free growing standard specified in the SP,
- SPR section 23 (3) requires the licensee to conduct a survey, on areas without regeneration objectives, that enables the district manager to determine if the stand meets the requirements specified in the SP,
- In accordance with SPR section 28 (1) (c), after completion of the report of the survey, the SP holder must submit, on or before May 31, a report in Form C with an accurate map showing the silviculture treatments applied and a map notation that includes a description of the forest cover,
- SPR 28 (1) (d) requires that licensees submit a signed and sealed declaration when a stand referred to in s.23 is free growing.

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FOREST PRACTICES CODE

General Bulletin

Number 41 **August 21, 2001**

Operational Planning Considerations for Bark Beetle Management

Introduction

This bulletin is designed to communicate administrative operational planning advice based on compliance with the current legislation, in particular FPC s41, in order to use the most effective options and expedite proposed operations for addressing the present bark beetle epidemic in the north central portion of BC, as well as endemic populations elsewhere.

Due to the natural cycle of the bark beetle, particularly the timing of attack, there is an inherent difficulty in applying the regular administrative processes of operational planning. The legislation has recognized this difficulty and created special provisions and categories in efforts to minimize this. In addition to these provisions, the most significant factor that can lead to effective management of the bark beetle is interagency and licensee co-operation.

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Minor Salvage

Minor salvage is defined in the OPR and includes both salvage and sanitation. The "salvage" portion of minor salvage applies to forest operations involved in harvesting wood that is dead, infested with pests, damaged or wood that must be harvested with the dead infested or damaged wood (mostly the red attack and grey trees) and the "sanitation" portion applies to tree removal or modification designed to reduce damage caused by forest pests and to prevent their spread (mostly green attack trees). All minor salvage has an upper limit of 2,000 m^3 per opening to meet the volume constraints of the definition.

FPC s10 lists the general requirements for FDPs. FPC s10(3) provides major exemptions for FDPs for minor salvage operations. For those operations the minimum requirements are :

- the FDP must be for a period of at least 5 years – FPC s10(1)(a)
- it must specify measures that will be carried out to protect forest resources – FPC s10 (1)(c)(ii)
- it must be consistent with any higher level plan – FPC s10(1)(d)(i)
- it must meet the requirements in effect 4 months before submission for approval or 4 months before it is given effect – FPC s10(1)(d)(ii)
- it must be signed and sealed by a professional forester – FPC s10(1)(e)

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Expedited Major Salvage Operation

This is defined in the OPR as harvesting salvage materials or carrying out sanitation treatments where the volume to be harvested is greater than 2,000 m^3 per opening and the operations must be expedited to prevent the spread of insects or to harvest timber that is deteriorating in quality and value. This volume does not include any harvest from rights-of-way associated with the salvage operation.

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Pest Incidence survey (OPR s37(1)(d))

The pest incidence survey of cutblocks, Section 37(1)(d), is an additional assessment associated with the SP that is required only if requested by a district manager. It is to determine the nature and extent of forest health factors in the SP, and must be available upon request at the time the SP is submitted.

For assessments requiring field work, as in the case of forest health, the DM should give the licence holder sufficient notice in writing to complete the work.

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General Bulletin

Number 42 **September 25, 2001**

Green-up

Introduction

The state of green-up in previously harvested cutblocks adjacent to proposed cutblocks has been a planning consideration for many years. When the Code was introduced in 1995, it was recognized that green-up needed to be part of the legislation as a planning provision. In 1998 the legislation on green-up was amended. Operational flexibility was increased and green-up was moved from a planning consideration to a harvesting practice.

In accordance with the Timber Harvesting Practices Regulation (THPR), a cutblock that is adjacent to a previously harvested cutblock may only be harvested if the adjacent cutblock is greened-up, unless the cutblock to be harvested satisfies other requirements as explained in this bulletin.

The purpose of the green-up provisions are to ensure that harvested cutblocks reach a level of recovery for wildlife, hydrologic, and scenic/recreational values, before harvesting occurs in bordering cutblocks. Changes made to regulations in 1998 addressed most green-up issues, and the intent is generally understood. However, there has been some confusion about green-up in relation to the following:

a) uniform distribution,
b) maximum cutblock size, and
c) the species and function of the residual stand.

The purpose of this bulletin is to clarify these issues and explain the operational flexibility of the THPR and the Operational Planning Regulation (OPR) associated with green-up.

Background

Part 10 of the OPR outlines the various parameters used to determine green-up. It helps to understand the background of these parameters, to make informed decisions.

a) Green-up height:
Green-up height is the average height of the tallest trees of a commercially valuable species or other species acceptable to the district manager (DM) in each 1/100th ha plot in a representative sample.

Visuals: An effective green-up height for scenic areas is a measurement that has been arrived at through numerous studies. In 1994 a visually effective green-up (VEG) study relating green-up height to slope, was conducted for the province. The study found that 3 m was the approximate height that provided initial visual cover on flat ground. At this

height young trees block stumps, logging debris, and bare ground from view. As the slope increases, so does the height required to obscure signs of logging. For example, on 60% plus slope, the trees generally need to be 8.5 m. The VEG study produced a guide that may be applied to known scenic areas (Green-up Guidebook - page 9, Table 1).

In applying green-up heights to achieve visual requirements, there may be situations where the tree height in Table 1 is inadequate. For example, where there is poor stocking, dispersed stems, tree species with thin crowns and site disturbance. In such cases visually effective green-up should be determined by observing previously harvested cutblocks, rather than relying solely on the recommend heights from Table 1.

Visual green-up is achieved when the new forest cover generally blocks views of stumps, logging debris, bare ground and roads. Rock outcrops and bluffs may be acceptable if there is the perception that a new forest exists amongst a rocky landscape.

Wildlife: For wildlife, green-up conditions provide security, thermal cover and forage. Recovery height generally starts at 3 m. However, the regulation provides the opportunity to increase the height, as may be necessary for larger mammals in areas with deep snow packs, or for forage production. Visual and wildlife green-up studies generally use top height measurements of the tallest tree in each $1/100^{th}$ ha plot to gauge recovery.

Hydrologic: Hydrologic green-up is a function of crown closure, height, species, and stand density. Studies have indicated that recovery for buffering snow melt and snow on rain processes generally starts at 3 m. However, this basic green-up height requirement may not be adequate, and a watershed assessment may be necessary to determine the appropriate green-up height. This assessment helps a forest development planner recognize the hydrologic implications of forestry operations. See section 14 of the OPR, and Watershed Assessment Procedure Guidebook (April 1999) for further details on this analysis.

b) Adequately stocked
Adequate stocking for green-up on the coast means 800 or more trees per ha and in the interior 1,000 or more trees per ha - of commercially viable species, at least 1.3 m in height (stocking height), as per section 67 of the OPR.

Adequately stocked, stocking height, and green-up stocking - work together. For a normal plantation, the average height tends to be 80% of the top height. Consequently, the adequately stocked number (800 or 1,000) helps to ensure that given a stocking height of at least 1.3 m, many trees will be of a greater height, and this will provide initial recovery for visuals, wildlife and scenic values when combined with a green-up height of at least 3 m for the tallest trees for each $1/100^{th}$ ha plot. As recovery relates to height of trees and number of stems, the adequate stocking number is reduced (500 and 700 trees, coast and interior, respectively) when the green-up height of the tallest (100) trees is increased to at least 3.5 m.

Discussion - THPR

THPR 9(1) A person may only harvest a cutblock that is adjacent to a previously harvested cutblock if that previously harvested cutblock is greened-up.

(2) Despite subsection (1), a person may harvest a cutblock that is adjacent to a previously harvested cutblock that is not greened-up if any of the requirements of the following paragraphs are met:

(a) harvesting is related to a licence to cut,…
(b) a partial cut silvicultural system is used for the **cutblock to be harvested**, that retains a **uniform distribution** of trees, throughout the cutblock, and **40% or more** of the pre-harvest basal area. (In other words, the basal area to be retained cannot be concentrated in one or more portions of the cutblock to be harvested. It must be evenly distributed.)

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Note, section 9(2)(d) of the THPR limits the total area of the cutblock to be harvested and the adjacent cutblock that has been harvested to – the maximum cutblock size or varied as described in OPR 11.

Species and Function of the Residual Stand

Section 39(3)(c) of the OPR states that the silviculture prescription (SP) must describe the silvicultural system to be used and the species and function of any trees that are left standing. Section 9(2)(b) of the THPR enables a cutblock to be harvested without green-up adjacency considerations, if the proposed cutblock is a partial cutting silvicultural system, with a basal area retention of greater than 40% in a uniform distribution over the cutblock.

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General Bulletin

Number 43 **December 14, 2001**

Bark Beetle Regulation

Introduction

The intent of the regulation is to better enable government and industry to manage the operational plan workload arising form the Forest Practices Code which will in turn lead to more effective management of the bark beetle epidemic. This regulation is consistent with the objectives outlined in the Mountain Pine Bark Beetle Action plan and the Minister's memo of November 11, 2001 which encourages SDM's to utilize all the legislative options and apply appropriate risk management principles to effectively manage the beetle outbreak.

Area Designation and Location

The effect of the designation is to geographically identify the area to which the regulation applies and provide context for DM's to consider when determining the measures taken to address an emergency (FPC42).

1. Pursuant to the regulation, the Minister of Forests is the statutory decision-maker for the purposes of designating an Emergency Bark Beetle Management Area (EBBMA). The EBBMA boundary is the minister's expression of the geographic extent to which he intends the regulation to apply.

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Existing Safeguards

It is are important for industry's marketplace and all interested stakeholders to recognize that many of the existing FPC parameters continue to apply, in particular the following:

1. FDP (limited content)
2. FPCs51 (previously unidentified resource features)
3. FPC s45 and 48 (damage to the environment and remediation)

4. FPC s96 (unauthorized harvest if harvesting exceed 5000 m3 or contrary to any conditions)
5. the standards in this regulation
6. the practices in other regulation (timber harvest practices, silviculture practices, and others)

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FOREST PRACTICES CODE

General Bulletin

Number 44 **October 6, 2003**

Management of Dothistroma Infected Lodgepole Pine Plantations in the ICH and CWH subzones In the Northern Interior Forest Region (NIFR)

The purpose of this bulletin is to clarify the policy background, obligations and funding options associated with plantations severely damaged by Dothistroma needle blight.

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Regulation Bulletin

Number 01 **October 31, 1995**

Regulation Amendment to Clarify Administrative Review and Appeal Process

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Act) allows for amendments to the Code and regulations to remedy transitional difficulties encountered during code implementation. Amendments may be retroactive to June 15, 1995.

On August 17, 1995, an Order In Council was approved amending the Administrative Review and Appeal Procedure (Forest Practices) Regulation.

The amendment adds a part to the regulation clarifying that if a section under the *Forest Act*, that was repealed and replaced by provisions under the *Forest Practices Code of British Columbia Act*, was contravened before June 15, 1995, the *Forest Act* provision in effect at the time of the determination specifies the review/appeal process.

This clarification was required because a new *Forest Act* appeal process was established on the same day the Code came into force, and it was not clear whether an appeal in this case should be conducted under the new or old appeal process. The amendment ensures that determinations made before June 15, 1995 are subject to the old *Forest Act* appeal process, and determinations made after that date are subject to the new *Forest Act* review and appeal process (as amended by Bill 34).

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Regulation Bulletin

Number ?? **July 10, 1996**

Administrative Review and Appeal Procedure

Background

On August 17 1995, B.C. Reg. 342/95 clarified the process for challenging a determination made under the *Forest Act*, for a contravention occurring before the *Forest Practices Code of British Columbia Act* (Code) came into force. This clarification was approved under the authority of section 221 of the Code, which allows for amendments to the Code by regulation to fix transitional difficulties encountered during implementation. Amendments made under this section may be retroactive to June 15, 1995 and remain in effect for up to one year from the date of enactment.

Under section 221 of the Code, the above amendment would have expired on August 16, 1996. To address this, B.C. Reg. 108/96 was approved on April 25 1996, further extending section 16 of the Administration Review and Procedure (Forest Practices) Regulation, and including reference to determinations made under the *Range Act*. Therefore, the process of review and appeal for any determination made under the *Forest Act* or *Range Act*, for contraventions occurring prior to June 15, 1995 is dictated by the legislation in force at the time of the determination - ***not*** the time of the offence.

Please see Regulation Bulletin #01, dated September 11, 1995 for cross-reference and further background.

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Regulation Bulletin

Number 02 **September 11, 1995**

Regulation Amendment to Expand the Scope of the Cutblock and Road Review

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Code) allows for amendments to the Code and regulations to remedy transitional difficulties encountered during code implementation. Amendments may be retroactive to June 15, 1995.

On August 17 1995, an Order In Council was approved amending the Cutblock and Road Review Regulation.

The amendment adds a part to the regulation making road permits which have been applied for, or may be eligible for application, subject to the cutblock and road review.

Previously, only issued road permits were subject to the cutblock and road review thereby excluding a significant number of road permits in the process of being issued or applied for. This amendment allows district managers to examine all current and pending road permits in the same manner as cutting permits during the cutblock and road review.

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Regulation Bulletin

Number 03 **September 11, 1995**

Regulation Amendment to Clarify Content Requirements for Operational Plans

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Code) allows for amendments to the Code and regulations to remedy transitional difficulties encountered during code implementation. Amendments may be retroactive to June 15, 1995.

On August 17 1995, an Order In Council was approved amending the Operational Planning Regulation. The amendment adds sections to the regulation making first-time forest development plans (FDPs) under new agreements subject to the same content and review requirements as other FDPs submitted between June 15 and December 15, 1995. As well, the amendment adds specific content requirements for woodlot licence FDPs during the initial phase of transition.

Due to a drafting oversight, the previous provision for content and review of FDPs and logging plans during transition did not cover new plans for licence agreements entered into after June 15, 1995. Consequently, these plans would not have been required to meet provisions of the Code or associated licence agreements. The amendment corrects this.

As well, the previous provision required that FDPs meet the basic requirements of associated licence agreements during the first six months of transition. This requirement could not apply to woodlots because woodlot licence agreements do not refer to FDPs. To remedy this, the amendment outlines basic requirements for woodlot licence FDPs in keeping with the intent of the code. These requirements represent the woodlot licence management plan provisions which satisfy key FDPs requirements and are deemed as FDPs under the Code for the purposes of transition.

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Regulation Bulletin

Number 04 **October 05, 1995**

Regulation Amendment Clarifying Approval of Forest Development Plans Covering Community Watershed Areas

Background

Sections 41(6) and 41(7) of the *Forest Practices Code of British Columbia Act* (Code) require that a forest development plan (FDP) or amendment that contains community watershed areas receive approval of both the district manager and the designated environment official.

The intent of this section was to ensure community watershed portions of FDPs receive joint ministry review and approval. However, as the Code is presently written, both the community watershed and non-community watershed portions of the FDP require joint review and approval.

Amendment

On September 15 1995, an Order In Council was approved amending the Operational Planning Regulation to address this problem.

The amendment temporarily suspends sections 41(6) and 4 1(7) of the Code and replaces them with a new provision requiring joint approval of only the community watershed portion of the FDP. This is clearly a housekeeping amendment to correct an error in the legislation. The ministry will attempt to permanently correct the error through a legislative amendment in the Spring 1996 legislative session.

Amendments to the Code and regulations are necessary to remedy transitional difficulties during code implementation, and are authorized under section 221 of the Code. Amendments are retroactive and are repealed June 15, 1996.

Contact

Further details and direction are available from your **Regional Forest Practices Code Co-ordinator** or:

Doug Kelly at Doug.Kelly@gems4.gov.bc.ca

Regulation Bulletin

Number 06 **February 02, 1996**

Forest Practices Regulation Amendments

Background

On February 2, 1996 an Order In Council was approved amending six forest practices regulations.

Forest Practices Board Regulation (schedule 1)

Section 8 and 9 have been amended to change the notification under section 181 to occur at the time of investigation following a complaint. Previously the board was required to provide notification upon receipt of complaints.

Forest Service Road Use Regulation (schedule 2)

Section 8 was amended by deleting requirements of vehicle identification for recreation trail use.

Operational Planning Regulation (schedule 3)

Section 11(2) (a) was repealed as the district manager has authority under individual operational plans to require specific maps and schedules to permit adequate assessment, sec 15(1), 33(1) 62(1), 69 (1).

Section 26(1) and 63(1) was amended to provide the district manager with complete discretionary authority for requiring archaeological impact assessments. Previously, the district manger was requited to have impact assessment completed based on the results of an archaeological overview assessment.

Section 31 was amended to provide phase-in provisions for newly designated community watersheds for terrain stability and surface soil erosion mapping.

Section 33 (3)(h) was amended to require seasonal site limitations in a logging plan only if there is no silviculture prescription.

New section 39.1 enables the district manager to place conditions on silviculture prescription exemption for such things as soil conservation concerns.

Range Practices Regulation (schedule 4)

Section 3 was amended to provide for 4 strict manager approval on construction of a livestock trail in a community watershed where the trail crosses or abuts a

stream.

Security for Forest Practices Liabilities Regulation (schedule 5)

Section 2(1) was amended to enable the ministry to require security fir any operation under a range use plan and for maintenance obligations relating to range developments.

Silviculture Practices Regulation (schedule 6)

Section 20 (e) was deleted to remove the requirement for major licence holders to submit Form D describing silviculture expenditures.

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Regulation Bulletin

Number 07 **June 16, 1996**

Forest Fire Prevention and Suppression Regulation

Background

On June 14, 1996 amendments to the Forest Fire Prevention and Suppression Regulation were approved by B.C. Regulation 148/96 which contains three important initiatives.

Amendments

Fire Preparedness Plans

The requirement for submitting a fire preparedness plan has been reduced to industrial activity identified in Tables A and B of Schedule 1. The plans no longer have to be approved by a designated forest official (DFO). As a result, the plan is deemed approved unless the DFO determines otherwise. This amendment to the provision clarifies which activities are subject to the requirement to prepare fire preparedness plans.

Fire Hazard Assessment

Section 33(a) and (b) specifics that if a clearcut or clearcut with reserves silviculture harvesting system is used, a fire hazard exists if a fire hazard rating of greater than 14 is determined. For other types of silvicultural systems or for road right-of-way clearing, land clearing , other industrial activities or timber harvesting related activities that leave woody debris, a fire hazard exists unless otherwise determined by a designated forest official.

Cost-effective Fire-fighting

Section 35(2) was amended to require Ministry of Forests approval for funding of water bombers and other aircraft used by a person carrying out an industrial activity as an initial fire response. This amendment does not prevent the person from using a water bomber if that is the appropriate response but funding for water bombers will be controlled by the Ministry of Forests.

This amendment to the Forest Fire Prevention and Suppression Regulation is not included in the Consolidated Regulation Amendments package released in June of 1996. The attached documentation should be inserted in the relevant location within the binder.

Contacts

Further details and direction are available from:

Steve Grimaldi at ???
Richard Grieve at ???

Regulation Bulletin

Number 08 **July 09, 1996**

Soil Conservation Amendments

Background

On April 25, 1996, regulation amendment 106/96 was approved amending soil conservation provisions the Operational Planning Regulation (OPR).

These amendments reflect existing interpretations of the regulations and are consistent with training currently being provided to government and industry workers.

The amendments to the soil conservation provision of the OPR were included to:

- establish consistent terminology between the regulations and the Ministry of Forests' guidebooks referenced in the regulations;
- ensure that soil disturbance definitions are applicable to coastal operations; and
- ensure that the mass wasting hazard (the risk of cut and fill slopes failing) is assessed before any harvesting takes place in the Interior.

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Regulation Bulletin

Number 09 **July 09, 1996**

Silviculture Practices Regulation Amendments

Background

On April 25, 1996, regulation amendment 107/96 was approved amending soil conservation provisions of the Silviculture Practices Regulation.

Sec. 26 of the regulation was amended to include compacted areas and corduroyed trails in the list of soil disturbances for which rehabilitation plans must be prepared.

The amendment to sec. 27 of the regulation ensures that excavated or bladed trails will be rehabilitated if they are constructed on areas with either a moderate or high likelihood of landslides, or is an area where the surface soil erosion hazard has not been determined.

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Regulation Bulletin

Number 10 **July 10, 1996**

Range Transitional Issues

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Act) provides for amendments to the Act by regulation to fix transitional difficulties encountered during implementation. Amendments under this section may be retroactive to June 15, 1995 and remain in effect for up to one year from the date of the amendment.

The Act requires that a range use plan be in place before any grazing or hay cutting is permitted on Crown range. The grandparenting provisions of the Act did not ensure that there was a grandparented range use plan for every range tenure. B.C. Reg. 249/95, approved June 8, 1995, amended the Operational Planning Regulation (OPR) by adding a new section 80. This section expanded what was considered as a grandparented range use plan.

On April 25, 1996, B.C. Reg 108/96 was approved amending section 80 of the (OPR). This amendment to section 80 extends the final expiry date of the grandparented range use plans to which it refers. In essence, if a range agreement that existed before June 15, 1995 did not have a tenure management plan the grandparented provisions provide for one until April 24, 1997.

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Regulation Bulletin

Number 11 **July 10, 1996**

Plan Approvals

Background

Section 221 of the Forest Practices Code of British Columbia Act (Act) provides for amendments to the Act and regulations to fix transitional difficulties encountered during code implementation. Amendments may be made retroactive and given effect for a maximum period of one year from the date of the amendment.

On April 25, 1996, BC Reg. 108/96 repealed and re-enacted Sections 80.1 of the Operational Planning Regulation (OPR) amending sections 41(6) and (7) of the Act for a period of one year. It also brought into effect a new section 82.4.

Section 80.1 provides the designated environment official (DEO) with authority to approve only that portion of the Forest Development Plan (FDP) contained in a community watershed or prescribed area. This extends a previous amendment to section 80.1 until April 24, 1997. Please see Regulation Bulletin #4 dated October 5,1995 for cross-reference and further background.

Section 82.4 is a new amendment that is retroactive to December 15, 1995 until April 24, 1997. This amendment applies to section 229(3) of the Act and gives the DEO the ability to use substantial compliance when approving a FDP.

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Regulation Bulletin

Number 12 **August 20, 1996**

Five-year Silviculture Plans

Background

Section 221 of the *Forest Practices Code of British Columbia Act* (Act) allows for amendments to the Act by regulation to remedy transitional difficulties encountered during code implementation. Amendments under this section may be retroactive to June 15, 1995 and remain in effect for up to one year from the date of the amendment.

On April 25, 1996, BC Reg. 108/96 brought into effect the following new sections 80.02, 82.1, 82.2 and 82.3 of the Operational Planning Regulation (OPR). Section 80.02 is a new section that exempts five-year silviculture plans from the need to be consistent with a forest development plan (FDP) or a higher level plan.

Sections 82.1, 82.2, 82.3 amends sec. 231(4), 232(3) and 233(3) of the Act respectively. These amendments allow the district manager to approve silviculture prescriptions, backlog silviculture prescriptions and stand management prescriptions in the absence of a five-year silviculture plan.

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Regulation Bulletin

Number 13 **August 20, 1996**

Non-Replaceable Licence Regulation

Background

On June 15, 1995, the *Forest Practices Code of British Columbia Amendment Act 1995* (Bill 18) was proclaimed but sec. 70.1 was not given effect to allow for the development of criteria for determining eligibility, the prescribed date and what payment should be made to the Crown. On April 4, 1996, B.C. Reg. 86/96 brought into force section 70.1 of the *Forest Practices Code of British Columbia Act* (Act) and amended the *Operational Planning Regulation* (OPR) to include provisions specifying the operation of sec. 70.1 (copy attached).

This amendment provides authority for government to assume responsibility for carrying out the silviculture obligations under certain non-replaceable licences in return for a payment to cover the costs of carrying out the obligations. Eligible licensees must apply to the district manager who will make a determination based upon criteria set out in the OPR sec. 52.1- 52.5.

Eligible licensees must meet certain prescribed requirements which include no affiliation or association with a holder of a replaceable major licence, unless the Minister of Forests determines it is in the best public interest to allow such an affiliation or association.

The OPR provides details on:

- how the district manager determines the cost of carrying out silviculture obligations being assumed (52,1);
- the date after which a licensee can ask the district manager to assume responsibility for carrying out an approved prescription (52.2);
- requirements a licensee must meet before requesting a prescription be assumed (52.3);
- the requirement that the licensee must agree to ask the government to assume all of the silviculture obligations under the licence (52.4); and
- how the district manager may require amendments before assuming responsibility (52.5).

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Forest and Range Practices Act

GENERAL BULLETIN

Number 1 **August 12, 2004**

Collection, Registration, Processing and Disposition of Seed

Introduction

The following information has been prepared for statutory decision-makers and persons who collect, register, process and trade tree cones, seeds, and vegetative material. This bulletin outlines the past and current requirements governing these activities, and provides advice to statutory decision-makers and others with respect to cone collection permits, the registration of seed, seed dealer's licenses, and the export of cones.

Summary

Cone collection permits, which were issued under the Forest Practices Code (Code), are no longer necessary in order to collect cones, seed and vegetative material from Crown land. However, persons who cut, damage or destroy Crown timber for the purposes of collecting cones etc. must have the appropriate authority prescribed in section 52 of the *Forest and Range Practices Act* (FRPA). Persons who plant trees to establish a free growing stand must continue to use only seedlots and vegetative lots registered with the ministry. Persons who process and dispose of cones and seed no longer require seed dealer's licenses under existing legislation. Persons may also export cones out of the Province for processing without obtaining prior approval from the Chief Forester (CF).

Background

Prior to the introduction of FRPA, the collection, registration, processing and disposition of cones, seed and vegetative material was regulated under the Code's *Tree Cone, Seed and Vegetative Material Regulation* (TCSVMR).

Section 38(2)(a) of the Code's *Timber Harvesting and Silviculture Practices Regulation* (THSPR), and section 82(2)(a) of the Code's *Woodlot Licence Forest Licence Forest Management Regulation* (WLFMR) required that persons who planted trees to establish a free growing stand to only use seedlots and vegetative lots collected and registered in accordance with the TCSVMR.

The TCSVMR, THSPR and WLFMR were repealed on January 31, 2004 when FPRA and its regulations came into force. However, the transition provisions under FRPA (sections 191, 192, 198, and 203) require persons to continue following the Code and its regulations when

establishing a free growing stand on a cutblock harvested under the Code and prior to approval of a forest stewardship plan.

Persons planting these "Code cutblocks" must therefore continue to use seed in accordance with section 38 of the THSPR or section 82 of the WLFMP, as the case may be, including the requirement to only use seed collected and registered in accordance with the TCSVMR.

Tree Cone, Seed and Vegetative Material Regulation

The TCSVMR applied to all persons in the Province who collected, registered, processed, and disposed of seed. As such, the TCSVMR did not apply exclusively to persons who planted trees under the Code.

Section 2 of the TCSVMR required persons, other than employees or agents of government, who wished to collect cones, seed or vegetative material of a commercial tree species from Crown land to obtain a Cone and Vegetative Material Collection Permit (FS 504) issued by a District Manager (DM) or person authorized by the DM. The permit identified the area, species, dates and other terms and conditions respecting the collection. Written consent from a licensee or lease holder who held rights to the Crown land was also required as a condition of issuance. No fees or royalties were charged for this permit.

Section 3 of the TCSVMR outlined the duties of the ministry for maintaining a registry of seedlots and vegetative lots, and the requirements for persons who sought to register lots with the ministry. These requirements included mandatory registration application forms and were supported by a number of ministry policies to ensure that lots met minimum standards for genetic and physical quality. DMs could also require submission of a cone collection permit, if applicable, as a condition of registration, although they rarely exercised this authority.

Sections 4 and 5 of the TCSVMR required persons who processed, bought, sold or traded cones, seeds or vegetative material to hold a Seed and Vegetative Material Dealer' License (FS 786) issued by the CF or person authorized by the CF. Holders of these licenses were also required to maintain a ledger of their transactions and to make this ledger available for inspection by CF or person authorized by the CF. Although the ministry issued Seed Dealers Licenses upon request, it did not enforce this requirement nor exercise its authority to conduct inspections.

Section 4 of the TCSVMR also precluded persons from removing cones collected from Crown land or seed orchards licensed with the ministry from the province for processing unless they obtained prior consent from the CF. The CF only received a few requests under this section over the past decade.

Requirements and Authorities under FRPA

Section 43 of the *Forest Planning and Practices Regulation* and section 32 of the *Woodlot Licence Planning and Practices Regulation* authorizes the CF to establish standards respecting the use, registration, storage, selection and transfer of seed. Persons who plant trees to establish a free growing stand under FRPA must comply with these seed use regulations and the CF Standards.

These regulations do not permit the CF to set standards for seed collection other than those he deems necessary for the purposes of regulating the use, registration, storage, selection and transfer of seed. As such, the CF can establish collection criteria that must be met in order to register a lot with the ministry (e.g. the minimum number trees from which a lot must be collected). The CF however cannot establish standards that would create a collection permit scheme or require a person to obtain a collection permit. Only government has the authority to introduce a permit scheme for collecting seed and other non-timber forest products from Crown land.

Although there are provisions in FRPA for government to establish regulations respecting seed and other botanical forest products (sections 158 and 168, respectively), and powers for government officials to inspect and seize these Crown assets if collected contrary to the prescribed requirements (Division 2, Seizure), there are no collection regulations in place under FRPA.

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Forest and Range Practices Act

FRPA GENERAL BULLETIN

Number 3 **June 9, 2005**

Use of the Term "Practicable" Under the Forest and Range Practices Act (FRPA) and Regulations

Background:

The basis for this FRPA bulletin is the FPC General Bulletin #30, “Use of the term “Practicable” under the FPC.

The Forest Planning and Practices Regulation, the Range Planning and Practices Regulation and the Woodlot Licence Planning and Practices Regulation all use the term "practicable" so it is important that it is understood and applied consistently.

The following table lists the sections where “Practicable” is referenced in the Forest Planning and Practices Regulation, similar references are found in the other two regulations:

FPPR Section	General Topic Heading
9	OSBG wildlife and biodiversity at the landscape level
12	Specifying results or strategies
25.1	Consistency of results and strategies with objectives
32	Exemption form review and comment process for mandatory amendments
36	Permanent access structures
39	Natural surface drainage patterns
50	Restrictions in a riparian management area
51	Restrictions in a riparian reserve zone
64	Maximum cutblock size
79.1	Exemptions from 22.1 of the *Act*
91	Minister may grant exemptions
92	Exemptions by minister responsible for *Wildlife Act*
Note: There may be other references to “Practicable” in other pieces of legislation that not referenced in this table.	

Discussion/Policy Advice

In FRPA, the word practicable is often used to say that something must be consistent "to the extent practicable" in the circumstances. This acknowledges that results and strategies, for example, sometimes may not be entirely consistent with government objectives; however, they are required to be as consistent as practicable in the circumstances. Practicability should take into account reasonable commercial considerations, amongst other considerations.

The word "practicable" is sometimes confused with the word "practical".

The following explanation from "Weseen, *Words Confused and Misused*" illustrates the difference between practical and practicable

> *Practical*, with its implied antithesis of *theoretical*, means "useful in practice".
>
> *Practicable* means "capable of being carried out in action".

The following example found in the American Heritage Book of English Usage also helps illustrate the difference: If you have a *practical* knowledge of Russian you can order coffee in a café in Russia, though it may not be *practicable* to try to learn the language of every country you visit. The word "practical" in this example relates to the ability to use Russian while "practicable" relates to a host of considerations requiring a balancing of all the relevant circumstances to determine whether or not it would be feasible to learn a host of other languages.

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Contacts

If there are any questions about this bulletin, please contact:

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Ian.Miller@gems5.gov.bc.ca
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Mike.Pankhurst@gems6.gov.bc.ca
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C&E Program Staff Bulletin 02
5 March, 2009

INTERACTION WITH AND USE OF SUBJECT EXPERTS

Purpose
To establish procedures that Compliance and Enforcement Program (C&E) staff will follow when requesting Subject Matter Expert (SME) assistance for investigations.

Scope
This bulletin applies directly to C&E staff, and indirectly to those field services staff who provide subject matter support to the C&E program.

Preamble
The development of a results-based legislative regime under the *Forest & Range Practices Act* (FRPA) has created a less prescriptive environment that allows licensees more innovation and greater flexibility in delivering end results. To evaluate if intended results have been achieved, and required strategies have been carried out, compliance and enforcement activities may require considerable expert input from the onset of an investigation through to any administrative or quasi-criminal proceedings.

Consistent with C&E's independent yet integrated model and the roles and responsibilities matrices, SME input will enable C&E staff to get the benefit of an integrated organization while maintaining their investigative independence.

In addition to other defences, due diligence under FRPA (i.e. took precautions that an informed and reasonable person would be expected to take, consistent with the expectations of his/her peers), will be more complex. Complex investigations will require C&E staff to gather expert opinion and evidence regarding the level of due diligence exercised. When expert opinion is requested, it will be provided within a reasonable and prioritized manner.

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Ministry of Forests Research Staff by Discipline

DISCIPLINE	RNI	RSI	RCO	BRANCH
Hydrology Water quality, erosion, riparian, alluvial fans, climate analysis, deactivation, channel morphology	Dave Wilford Stephane Dube John Rex	Rita Winkler Dave Gluns Patrick Teti	Bill Floyd Dave Campbell	Dan Hogan Robin Pike David Maloney
Geomorphology Landslides, water quality, alluvial fans, surface erosion, climate analysis, deactivation, channel morphology	Martin Geerstema Matt Sakals	Tim Giles Peter Jordan	Denis Collins Tom Millard Dave Campbell	Dan Hogan
Soils Site degradation, nutrition, soil ecology, mushrooms, carbon, soil classification	Stephane Dube Richard Kabzems	Bill Chapman Mike Curran Graeme Hope	Marty Kranabetter	Shannon Berch Chuck Bulmer
Silviculture Partial cutting, veg management	Dave Coates Erin Hall Richard Kabzems Phil LePage	Andre Arsenault Teresa Newsome Michaela Waterhouse	Brian D'Anjou Rod Negrave	Rob Brockley George Harper Louise Montigny

DISCIPLINE	RNI	RSI	RCO	BRANCH
Ecology Biodiversity, eco classification, fire ecology, range ecology, stand dynamics, carbon accounting	Allan Banner Craig Delong Richard Kabzems Erin Hall	Ray Coupe Michael Ryan Deb MacKillop Andre Arsenault	Andy MacKinnon Sari Saunders Heather West Rod Negrave	Evelyn Hamilton Will Mackenzie John Parminter Reg Newman
Fisheries Riparian, habitat	John Rex	Paul Jon Askey		Peter Tschaplinski
Wildlife Habitat Biodiversity, specific habitat requirements	Dale Seip Doug Steventon	Walt Klenner Harold Armleder Michaela Waterhouse	Louise Waterhouse Melissa Todd	Bruce McLellan Fred Hovey

Ministry of Forests Operational Subject Experts by Discipline

DISCIPLINE	RNI	RSI	RCO	BRANCH
Engineering Includes harvesting practices	Ed Hoffmann Howard DeBeck Tracey Raume	Brent Case Rob Schweitzer Gary McLelland Drew Always Barry Trenholm Les Thiessen Jeff Townsend Pat Martin	Hardy Bartle Stephen Ngo Chuck Rowan	
Appraisals	Brian Oke Ralph Ottens	Stuart Card	Steve Edwards Alan Rudson	
Billings		Victoria Groves Stuart Sapinsky	Stuart Messenger	
Cruising Includes residue and waste	Ron Alton Ralph Ottens	Els Armstrong Peter Semenoff	Bruce Markstrom Robert Rentz Stan Smethurst	

DISCIPLINE	RNI	RSI	RCO	BRANCH
Scaling	Brian Cornelis Patrick Ellis	Stuart Sapinsky Bob Trudeau Victoria Groves Andy Cosens	Bruce Walders Lynne Wheeler	Cynthia Lidstone
Entomology	Bob Hodgkinson Ken White	Lorraine MacLauchlan Art Stock Leo Ramkin	Don Heppner	
Pathology	Richard Reich Alex Woods	Michelle Cleary Michael Murray	Stefan Zeglen	
Visual Quality	Luc Roberge		Lloyd Davies	
Silviculture	Gord Dow Ljiljana Knezevic Jennifer Plummer Anna Monetta		Chuck Rowan Craig Wickland	

DISCIPLINE	RNI	RSI	RCO	BRANCH
Veg Management	Gord Dow		Craig Wickland	
Regen & F/G Surveys	Ljiljana Knezevic Gord Dow Jennifer Plummer Anna Monetta	Mike Madill	Brian D'Anjou Craig Wickland	
Seed Transfer	Anna Monetta			
Stocking Standards	Gord Dow Ljiljana Knezevic Jennifer Plummer Anna Monetta		Craig Wickland	
Information Systems	Ljiljana Knezevic			

DISCIPLINE	RNI	RSI	RCO	BRANCH
Soil Disturbance		Graeme Hope Mike Curran Bill Chapman	Marty Kranabetter Chuck Rowan	
Geomorphology		Peter Jordan Joe Alcock	Dave Campbell Jim Dunckley Tom Millard	
Range		Francis Njenga Rick Tucker	Val Ciapponi	
Recreation	Gary Westfall	Jennifer Eastwood		
Resource Features			Paul Tataryn Lloyd Davies	

DISCIPLINE	RNI	RSI	RCO	BRANCH
Forest Policy			Chuck Rowan	
Invasive Plants			Jeff Hallworth	

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Ministry of Forests and Range
Interpretation Bulletin #39

June, 2009

APPLICATION OF THE STATUTORY DEFENCES AND VICARIOUS LIABILITY UNDER THE *WILDFIRE ACT*

This bulletin does not constitute legal advice

PURPOSE

This bulletin is intended to provide advice to investigators and statutory decision-makers on the relationship between the statutory defences and vicarious liability in the *Wildfire Act*.

While this bulletin does not have the force of law, it does reflect the Ministry's view of how these provisions should be interpreted.

THE LEGISLATION

The statutory defences are found in section 29 of the *Wildfire Act*. The vicarious liability provision is found in section 30. Both are reproduced here.

Defences in relation to administrative proceedings

29 For the purposes of an order of the minister under section 26, a person may not be determined to have contravened a provision of this Act or the regulations if the person establishes that

(a) the person exercised due diligence to prevent the contravention,
(b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or
(c) the person's actions relevant to the provision were the result of an officially induced error.

Vicarious Liability

30 (1) If a person's contractor, employee or agent contravenes a provision of this Act or the regulations in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

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Existing C&E bulletins on the statutory defences that can be referenced:

#14 *Assessing Due Diligence as a Defence* (October 4, 2003)

#17 *Due Diligence Defence Update* (October 1, 2007)

#13 *Assessing "Reasonable Mistake of Fact" as a Defence* (October 23, 2003)

#9 *Officially Induced Error* (October 8, 2001)

Brian Simpson, Director,
Wildfire Management Branch

Dan Graham,
Director, Compliance & Enforcement Branch

APPENDIX A

TWO GENERAL PRINCIPLES

Although assessments of due diligence must be done on a case-by-case basis, two general principles apply in virtually every case:

1. **The greater the likelihood of a harmful event occurring, the higher the standard of care.**

This just makes sense. If harm is very likely, then more must be done to prevent it. Assessment of the likelihood of a harmful event occurring is based on what might reasonably be predicted through a risk analysis done by a person knowledgeable in the operational practices involved.

Factors that may affect the likelihood of a harmful event occurring include, but are not limited to:

- the nature of the activity;
- the inherent risks in the activity or in the machinery or materials used;
- the size of the operation;
- the remoteness of the site;
- the seasonal, weather or climatic conditions;
- the terrain;
- the past performance or experience of the operator; and
- the nature or sensitivity of the environment.

2. **The greater the potential damage, the more care required.**

This also makes good sense. If the potential harm is very great, then more must be done to prevent it. Factors to consider in assessing the magnitude of harm include, but are not limited to:

- the risk of a fire starting (ignition)
- the risk of a fire spreading (e.g. rate of spread)
- the presence, proximity and importance of other resources and values;
- the likelihood of personal injury or death;
- the likelihood of property damage or economic loss;
- whether the damage can be repaired or mitigated.