

File: 23060-20/K50035 (2006)

February 22, 2008

s.22

REGISTERED MAIL

RE: DECISION RELATIVE TO A FIRE THAT OCCURRED APRIL 20, 2006 ON LOT 2, DISTRICT LOT 3541, OSOYOOS DIVISION YALE DISTRICT, PLAN 23326

Dear Sir:

This is further to my letter dated September 19, 2007 in which I provided you opportunity to input my decision. I note you have not provided any response or input to this letter. I have now made a determination based on all the available evidence, and I have concluded that it is appropriate to make a determination and order below.



AUTHORITY

The Minister of Forests and Range has delegated to me, under section 58 (1) of the *Wildfire Act* (WA), the authority to make determinations under section 25 of that *Act*, with respect to government's fire control costs and to make orders requiring a person to pay to the government those amounts.

DETERMINATION

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that your caretaker did cause the fire on April 20, 2006. Based on that determination by an order under section 25 (2) of the *Wildfire Act*, I require you to pay \$2,695.29 to the Government of British Columbia. An invoice for the amount of \$2,695.29 will be sent to you under separate cover. This amount must be paid subject to the stay imposed by section 36 (1) of the *Wildfire Act*.

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FINDING OF FACT

I have made the following findings with respect of facts, to come to my determination;

- the fire investigation determined the caretaker placed hot embers from a concrete burn pit onto grasslands and the fire started;
- instructions to patrol were issued;
- the owner was advised an investigation would occur with potential billing;
- the Westside Fire Department responded as requested by the Forest Service;
- there are no previous infractions; and
- you were provided the opportunity to input my decision September 19, 2007.

ITEMIZED PARTICULARS OF THE GOVERNMENT'S FIRE CONTROL COSTS

Pursuant to section 25 (1) (a) of the *Act*, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|--------------------------|-------------------|
| Wages (regular staff) | \$ 324.99 |
| Emergency fire fighter | 31.20 |
| Forest Service equipment | 107.10 |
| Services-Westside F.D. | 2,000.00 |
| Consumables | 32.00 |
| Administrative fees | <u>200.00</u> |
| TOTAL | \$2,695.29 |

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 554-5500 within this 15 day period.

Opportunities to review and appeal

If you have *new* information that was *not available at the time I made my order(s)*, you may

request a review of the order(s) on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

1. your name and address, and the name of the person, if any, making the request on your behalf;
2. the address for serving a document to you or the person acting on your behalf;
3. the new evidence that was not available at the time of this determination was made; and
4. a statement of the relief requested.

This request should be directed to me at Kamloops Fire Centre, 4000 Airport Road, Kamloops, B.C. V2B 7X2 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order(s), you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

1. your name and address, and the name of the person, if any, making the request on your behalf;
2. the address for serving a document to you or the person acting on your behalf;
3. the grounds for appeal; and
4. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

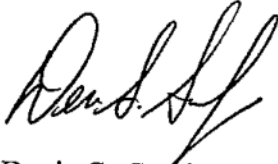
The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Please feel free to contact me if you have any questions.

Yours truly,



Denis G. Gaudry
Fire Centre Manager
Kamloops Fire Centre

cc Judi Beck
Manager of Fire Management
Forests Protection Branch

Thor Larsen
Senior Forest Protection Officer
Kamloops Fire Centre



BRITISH
COLUMBIA

The Best Place on Earth

File: K30144 (2007)

March 1, 2010

s.22

**Re: Order for Recovery of Fire Control Costs and Related Amounts
Issued under section 25 (2) the Wildfire Act**

This is further to my letter dated October 27, 2009 and your opportunity to be heard of December 14, 2009 respecting the allegation that you may have caused or contributed to the spread of the 2007 fire number K30144. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause or contributed to the spread of the above-noted fire.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$16,126.02 to the government.

This amount must be paid by June 1, 2010, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

Page 1 of 5

If payment is not received by the government by this date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Based on the evidence presented by ^{s.22} and Ministry staff, I am satisfied that the following facts are **not** in dispute:

Evidence Presented By ^{s.22}

^{s.22}

-
- You confirmed that legal authorization to burn, including a burn registration number, was never requested or obtained at anytime before, during, or after this fire first started. You stated "I didn't apply for a burning license because I didn't want to be refused." You also stated, "Back to the regulations, as I said, I did take a look at them and there was no way that I could meet the guidelines."
- You confirmed that you did ignite the slash pile on your property on May 9th, 2007.
- You were aware of the dryness of the forest floor and stated, "It was so dry, I was aware of that."
- You did contribute to the cause by not extinguishing the piles, and not having adequate guards around the piles that contributed to the spread and resulting wildfire.
- You confirmed that you did not have fire breaks around the piles prior to ignition.
- You stated that you hired a contractor who logged your property and confirmed the contractor also piled the logging slash.

- You confirmed s.22 was the contractor hired to do this logging to harvest mountain pine beetle and root rot timber from your property.
- You confirmed you do not have insurance on the property.
- You stated you did not conduct any of the fire suppression activities yourself, and you did not supply any fire fighting resources because you were in Salmon Arm at the time.

Ministry Evidence

On May 10th at 1834 hrs, the Kamloops Fire Centre received a report of a fire on the s.22. With respect to the facts discovered during the fire cause investigation conducted on May 10, 2007, Ministry staff presented the following evidence:

- MoFR investigated the fire report and dispatched fire fighting personnel to the scene at 1842 hrs.
- Ministry staff carried out fire suppression on the fire.
- Ministry staff investigated the origin and cause of the fire. This investigation discovered that the fire originated from the debris pile ignited by s.22. There was no fuel break or fire guard constructed around the debris pile.
- The fire burnt from the pile into the adjacent area.
- There was no one in attendance when Ministry staff arrived.
- All other potential ignition sources were investigated and ruled out.
- You agree with all the above Ministry evidence.

Consideration of the evidence and findings of fact:

I conclude that the facts set out above support a finding that you did cause or contribute to the spread of the above-noted fire.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| FIRE NUMBER | FIRE START DATE | LOCATION | AMOUNT |
|-------------|-----------------|----------|-------------|
| K30144 | May 10, 2007 | s.22 | \$16,126.02 |
| TOTAL | | | \$16,126.02 |

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay \$16,126.02 for the government's fire control costs.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-554-5500 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order[s]*, you may request a review of the order[s] on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 4000 Airport Drive, Kamloops B.C. V2B 7X2, and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order[s], you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

File: K30144 (2007)

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.



Steve Schell, RPF
Manager,
Kamloops Fire Centre

cc
Lyle Gawalko
Manager of Fire Management
Wildfire Management Branch

Murray Henry
Senior Forest Protection Officer
Kamloops Fire Centre

The Forest Practices Board
3rd Floor, 1675 Douglas Street
PO Box 9905, Stn Prov Gov't
Victoria, BC
Canada V8W 9R1



The Best Place on Earth

File: 23060-40 K20274, K20775, K21808, K21921, K70077, K70182, K70263,
K70906, K71126, K71508 (2008)

February 16, 2010

Canadian Pacific Railway
CPR Claims Division
Suite 920, 9th Avenue SW
CALGARY, Alberta T2P 4Z4

Attention: Dale Cisecki, Claims Manager

**Re: Order for Recovery of Fire Control Costs and Related Amounts
Issued under section 25 (2) the *Wildfire Act***

Dear Sir:

This is further to my letter dated October 26, 2009 and your telephone conversation with Murray Henry, Senior Forest Protection Officer, December 22, 2009 respecting the allegation that you may have caused or contributed to the spread of 2008 fires K20274, K20775, K21808, K21921, K70777, K70182, K70263, K70709, K71127, and K71508. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause or contributed to the spread of the above-noted fires.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$42,727.73 to the government.

Page 1 of 5

File: 23060-40 K20274, K20775, K21808, K21921, K70077, K70182, K70263,
K70906, K71126, K71508 (2008)

This amount must be paid by May 1st, 2010, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

If payment is not received by the government by this date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| FIRE NUMBER | FIRE START DATE | LOCATION | AMOUNT |
|-------------|-----------------|-----------------------------|--------------|
| K20274 | June 21, 2008 | Mile 33.56 W of Wallachin | \$ 1,512.12 |
| K20775 | July 12, 2008 | Savona/Cherry Creek | \$ 8,050.42 |
| K21808 | Aug. 27, 2008 | Juniper Beach Rec Site | \$ 6,189.55 |
| K21921 | Sept. 16, 2008 | 50°45.938, -121° 03.356 | \$ 818.53 |
| K70077 | Apr. 23, 2008 | N. of Lytton Lumber Yard | \$ 1,451.47 |
| K70182 | May 18, 2008 | 3 km North of Lytton | \$ 16,948.07 |
| K70263 | June 19, 2008 | 4 km N of Spences Bridge | \$ 1,143.70 |
| K70906 | July 19, 2008 | 1 km S of Nicomen, Hwy 1 | \$ 1,428.95 |
| K71126 | July 28, 2008 | Mile 92.5 E of Jade Springs | \$ 772.09 |
| K71508 | Aug. 14, 2008 | Jade Springs | \$ 4,412.83 |
| | | | |
| TOTAL | | | \$42,727.73 |
| | | | |

File: 23060-40 K20274, K20775, K21808, K21921, K70077, K70182, K70263,
K70906, K71126, K71508 (2008)

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay \$42,727.73 for the government's fire control costs.

A separate letter and payment instructions will be sent to you.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 554-5500 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order[s]*, you may request a review of the order[s] on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 4000 Airport Drive, Kamloops, B.C. V2B 7X2, and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order[s], you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;

File: 23060-40 K20274, K20775, K21808, K21921, K70077, K70182, K70263,
K70906, K71126, K71508 (2008)

- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

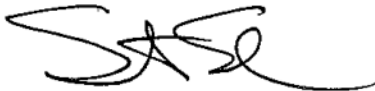
The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.

Yours truly,



Steve Schell
Manager
Kamloops Fire Centre

/mal

cc Lyle Gawalko
Manager of Fire Management
Forests Protection Branch

Murray Henry
Senior Forest Protection Officer
Kamloops Fire Centre

File: 23060-40 K20274, K20775, K21808, K21921, K70077, K70182, K70263,
K70906, K71126, K71508 (2008)

The Forest Practices Board
3rd Floor, 1675 Douglas Street
PO Box 9905, Stn Prov Gov't
Victoria, BC
Canada V8W 9R1



File: 23060-40 – K20065 (2014)

April 18th, 2016

**Order for Recovery of Fire Control Costs and Related Amounts
No. K20065 (2014)**

Issued under section 25 (2) the Wildfire Act

s.22

Dear ^{s.22}

This is further to my letter dated March 15th, 2016 and your opportunity to be heard (OTBH) held on April 8th, 2016 respecting the allegation that you caused wildfire K20065 (2014). I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determinations and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of wildfire, and to make orders requiring a person to pay to the government those amounts.

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a wildfire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the wildfire, calculated in the prescribed manner; and

- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the wildfire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the wildfire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a wildfire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

- (c) is an owner of the private land on which a wildfire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the wildfire or the spread of the wildfire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;

- (b) the reasons for the order; and

- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background:

On May 1st, 2014 ^{s.22} ignited a category 2 burn pile on his private property situated on ^{s.22}. At approximately 12:00 pm the fire escaped and Mr. ^{s.22} reported the escape through 911. BC Wildfire Service personnel responded at approximately 14:45 pm and attended to the fire until it was declared out at approximately 14:30 pm on May 2nd, 2014.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that ^{s.22} did cause wildfire K20065

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K20065 was \$15,359.51.

Under section 25 (2) of the *Wildfire Act*, I have determined that ^{s.22} is an owner of the private land on which wildfire K20065 originated.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require ^{s.22} to pay \$15,359.51 to the government.

This amount must be paid by June 15th 2016, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, an Origin and Cause Report, including field notes and photographs completed by Ministry investigator Michael Sidow. I also heard evidence presented by you at your OTBH held on April 8th, 2016.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- s.22 is owner of private property legally known as PID number (property).
- The property is located at s.22 Kamloops BC.
- s.22 lit a category 2 burn pile at approximately 10:30 am on May 1st 2014.
- At approximately 12:00 pm the fire escaped and s.22 called 911.
- s.22 admitted wildfire K20065 started from his burn pile.
- The Kamloops Fire Center was notified at approximately 13:30 pm and personnel were on site at approximately 14:45.
- Crews continued suppression efforts until the fire was declared out at 14:30 pm May 2nd 2014.
- s.22 had hand tools on site but no water source for extinguishing the burn pile or fuel break around the burn pile.
- s.22 attempted to control the wildfire, without success.
- reported the fire and was cooperative.
- The Fire Origin and Cause investigator determined the cause of wildfire K20065 was s.22 category 2 burn pile.
- s.22 does not have a cost sharing agreement with the government.
- is not the holder of a forest licence under the *Forest Act*.
- Fire control costs totaled \$15,359.51 and the wildfire was approximately 15.2 hectares in size.
- There was no damage to Crown property.

There are no facts in dispute in this case.

I conclude that the facts set out above support a finding that s.22 did cause wildfire K20065.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act*, I may require you to pay to the government, the government's costs of carrying out fire control on wildfire K20065.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the Wildfire Regulation and find that those do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act*, and have not entered into a cost sharing agreement or a service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1 titled "Fire Control Responsibilities and Costs", effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, Wildfire Regulation s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order ^{s.22} to pay the government's fire control costs of \$15,359.51.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|--|--------------------|
| • Hourly wages and overtime wages of responding employees | \$10,880.14 |
| • Distance charges for use of government and private vehicles | \$ 1,146.23 |
| • Food, transportation and accommodation expenditures | \$ 129.82 |
| • Costs for expendable supplies and materials consumed | \$ 416.00 |
| • Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control | \$ 227.40 |
| SUB TOTAL: | \$12,799.59 |
| • Mandatory 20% overhead pursuant to section 31 (b) of the Wildfire Regulation | \$ 2,559.92 |
| GRAND TOTAL: | \$15,359.51 |

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of \$15,359.51 must be paid by June 15th 2016, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 15th 2016, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government,
 - i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by you, and
 - ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by you.

Payment should be made by cheque payable to the Minister of Finance, citing file number: 23060-40 – K20065 (2014), and sent to:

BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted wildfire.

Opportunity for correcting this determination

For 15 days after making my determinations and order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 565-6193 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;
- b) the address for serving a document on you or the person acting on your behalf;
- c) the new evidence that was not available at the time this determination was made; and
- d) a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC V8T 5J9

It must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my determination, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a) your name and address; and the name of the person, if any, making the request on your behalf;

- b) the address for serving a document on you or the person acting on your behalf;
- c) the grounds for appeal;
- d) a copy of this determination; and
- e) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act* and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **three week time limit** for delivering a notice of appeal.

Yours truly,


Les Husband

Fire Centre Manager
Prince George Fire Centre

cc: Kathleen Werstiuk, Manager Risk and Litigation, BCWS
Laurence Bowdige, Recovery Officer, BCWS
Ian Douglas, SPOP, BCWS
Mark Haddock, Forest Practices Board
Madeline Maley, Executive Director, BCWS
Ian Meier, Director, BCWS

File: 23060-40 – K60054 (2012)
00155031-00

Order for Recovery of Fire Control Costs and Related Amounts No.
K60054 (2012) – KFC 2015
Issued under section 25 (2) the Wildfire Act

April 17, 2015

To: s.22

This is further to my letter dated March 6, 2015 respecting the allegation that you may have caused Fire K60054 in May 2012. In that letter dated March 6, 2015, you were offered an Opportunity to be Heard ("OTBH") which you declined. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determinations and order below.

Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 8

Ministry of Forests,
Lands and Natural
Resource Operations

Northwest Fire Centre

Location:
6350 D.O.T. Avenue
Smithers, British Columbia
V0J 2N0
CANADA

Mailing Address:
Bag 5000
Smithers, BC V0J 2N0
Tel: (250) 847-6600
Fax: (250) 847-7470

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the Minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner;
- (b) determine the amount that is equal to the dollar value of any:
 - (i) Crown timber;
 - (ii) other forest land resources;
 - (iii) grass land resources; and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

- (c) determine the costs:
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the Minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person:

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in

that private land, or is an occupier of that private land with the permission of the owner or holder.

- (3) The Minister must not make an order under subsection (2) unless the Minister, after giving the holder, occupier or owner an opportunity to be heard, or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.
- (4) The Minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:
 - (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount;
 - (b) the reasons for the order; and
 - (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause Fire K60054.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on Fire K60054 was \$14,336.17.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$14,336.17 to the government.

This amount must be paid by June 18, 2015 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Consideration of the evidence and findings of fact

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, a Fire Origin and Cause Report and statements written by Wildfire Management Branch staff and Compliance and Enforcement staff.

s.22 ; lit the debris pile on his property in late winter of 2011 and it was guarded and burned at that time. According to the investigators' evidence, s.22 stated that he checked the debris pile prior to May 10, 2012 and it was not smouldering on the surface but he had arranged for a machine to dig it up on May 14, 2015 to deal with suspected smouldering inside and underneath the pile. s.22 also stated that he was sure the fire originated from his debris pile. The Fire Origin and Cause Report and information gathered from Wildfire Management staff suggest that fire K60054 was caused by holdover in a debris pile.

The fire was reported to Wildfire Management Branch by the Merritt Fire Department on May 10, 2012 at approximately 1418 hours. The Kamloops Fire Centre responded by dispatching personnel and crews at 1424 hours.

I am satisfied that the Fire Origin and Cause Report demonstrates, on a balance of probabilities, that the wildfire did originate from the debris pile tha^{s.22} lit on his property.

Based on all of the evidence presented, whether specifically referred to here or not, I find the following facts:

- s.22
- s.22 lit a debris pile on his property in late winter, 2011.
- did not properly extinguish the debris pile.
- was issued a violation ticket for failing to extinguish the debris pile prior to May 10, 2012.
- A wildfire occurred on May 10, 2012 on ^{s.22} property.
- The debris pile lit by s.22 was the cause of the wildfire.
- s.22 did not cause the wildfire intentionally.
- The government carried out fire control on the wildfire.
- The government did not suffer any damage or destruction to its property.

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which

the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the Wildfire Regulation and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act*, nor have you entered into a cost sharing agreement or a service agreement with the government.

I have also considered Wildfire Management Branch Policy 9.1 entitled Wildfire Control Responsibilities and Costs, in which the following guidance is provided on page 5:

Private land: Owners and/or occupants of private land will be billed for fire suppression costs if it is determined that they caused or contributed to the fire or spread of the fire on their land (*Wildfire Act* s.25, Wildfire Regulation s.31). Exceptions to this will be based on a Cost Sharing Agreement or Service Agreement.

As you had not entered into a cost sharing agreement or a service agreement with the government before the date of the wildfire, you do not fall within the exceptions of Policy 9.1.

No other reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs, and so I am exercising my discretion to order you to do so.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

- Wages of personnel - \$10,629.11
- Vehicles - \$382.70
- Supplies & materials - \$688.00
- Private goods & services - \$247.00
- Administration fee of 20% - \$2,389.36

For a total of \$14,336.17

Having regard to the facts of this case, I have decided, under 25(2) of the *Wildfire Act*, that it is appropriate to require you to pay \$14,336.17 for the government's fire control costs.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of Amounts Owing

My cost recovery order in the amount of \$14,336.17 must be paid by June 18, 2015, subject to the stay imposed by section 36(1) of the *Wildfire Act*. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 18, 2015, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest as prescribed;
- may be recovered in a court as a debt due to the government; and
- constitutes in favour of the government, a lien on chattels that you own or have an ownership interest in.

Payment should be made by cheque, payable to the Minister of Finance and sent to: Wildfire Management Branch, 2nd Floor, 2957 Jutland Road, Victoria, BC V8T 5J9, citing file number: 23060-40 – K60054 (2012) 00155031-00.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination I have made, you may contact me at 250-847-6612 or diane.mackay@gov.bc.ca within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Risk and Litigation
Wildfire Management Branch
2957 Jutland Road
Victoria BC V8W 3E7

and it must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

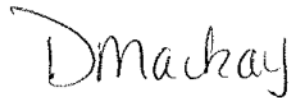
- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal;
- d. a copy of this determination; and
- e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.



Diane Mackay
Fire Centre Manager
Northwest Fire Centre

cc: Don Parno, Compliance & Enforcement, Thompson Okanagan
John Pennington, Forest Practices Board
Ian Douglas, SPO-FM, Kamloops Fire Centre
John Harkema, Compliance & Enforcement Branch
Kevin Edquist, Director, Compliance & Enforcement Branch
Kathleen Werstiuk, Manager, Risk & Litigation, Wildfire Management Branch

File: 23060-40-FKA-29966/K70058 (2012)
Client #00165389

Order for Recovery of Fire Control Costs and Related Amounts No.
Issued under section 25 (2) the Wildfire Act

April 27th, 2015

s.22
To:

This is further to my letter dated March 4th, 2015 and my offer of an opportunity to be heard (OTBH), to which you provided a written submission, respecting the allegation that you may have caused or contributed to fire K70058 on the south side of Carpenter Lake in 2012. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determinations and order below.

Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Legislation – *Wildfire Act*

Page 1 of 8

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber,

(ii) other forest land resources,

(iii) grass land resources, and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs:

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person:

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated,

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease, or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did both cause and contribute to fire K70058.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on Fire K70058 was \$281,587.44.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$281,587.44 to the government.

This amount must be paid by June 30th 2015, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence and findings of fact

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, a Fire Origin and Cause Report completed by Compliance and Enforcement (C&E) Officers Herb Noren and Brad Beaupre.

s.22 submitted a letter in response to his invitation to an OTBH. The letter outlined his current circumstances and did not dispute any of the evidence submitted by the Ministry.

A ticket was issued to s.22 on May 11, 2012, in relation to Fire K70058 for two separate contraventions. The first contravention was section 5(1) of the *Wildfire Act* (lighting, fueling or using an open fire not in accordance with regulations), while the second was section 52 of the *Forest and Range Practices Act* (damage or destroy Crown timber without authority). The ticket was undisputed and subsequently paid by s.22.

Based on all of the evidence, whether specifically referred to here or not, I am satisfied that the following facts are **not** in dispute:

- s.22 was part owner of private land legally known as title number (he property).
- The property is located within one 1 km of forest land. s.22 admitted in his statement to C&E Officers that he had lit a category three debris pile at approximately 14:00 on Friday May 11th 2012 on the property.
- s.22 did not obtain a burn registration number.
- failed to monitor the burning debris pile.
- The Fire Origin and Cause Report indicates that the probable cause of fire K70058 was embers blown from the burning debris pile on the property to adjacent land, igniting combustible forest fuels.
- The Fire Origin and Cause Report rejected any other possible causes for fire K70058.
- The Kamloops Fire Centre was notified on of the wildfire on May 11th 2012 and immediately mobilized fire suppression efforts to extinguish it.
- Wildfire Management Branch staff continued suppression efforts until fire K70058 was declared out on August 22nd 2012.
- s.22 does not have a cost sharing agreement with government.
- is not the holder of a forest license under the *Forest Act*.
- Fire control costs totaled \$281,587.44, including a prescribed overhead amount, and the area burned was approximately 26 hectares.

There are no facts in dispute in this case.

I conclude that the facts set out above support a finding that you did cause and contribute to the spread of fire K70058.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

| | |
|---|-------------------------|
| • Hourly wages and overtime of responding employees | \$76,702.57 |
| • Distance charges for use of government and private vehicles | \$4,250.55 |
| • Food, transportation and accommodation expenses | \$7,397.90 |
| • Costs for expendable supplies and materials consumed | \$2,576.00 |
| • Air tanker fuel costs and flight costs | \$10,823.66 |
| • Helicopter Fuel and flight cost | \$30,810.85 |
| • Retardant and other suppressant costs | \$16,546.40 |
| • Rent on use of equipment | \$18,505.83 |
| • Repair and cleaning of damaged vehicles or equipment | \$1,410.13 |
| • Private goods and services contracted, rented or purchased | \$64,785.27 |
| • Rehabilitation and/or slope stabilization costs | \$847.04 |
| • SUBTOTAL | \$234,656.20 |
| • Greater of \$200.00 or 20% of the amount determined | \$46,931.24 |
| • GRAND TOTAL | \$281,587.44 |

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you as you are not the holder of a forest agreement or license under the *Forest Act*, nor have you entered into a cost sharing agreement or a service agreement with the government.

I have also considered Wildfire Management Branch Policy 9.1 entitled *Wildfire Control Responsibilities and Costs*, in which the following guidance is provided on page 5:

Private land: Owners and/or occupants of private land will be billed for fire suppression costs if it is determined that they caused or contributed to the fire or spread of the fire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

Exceptions to this will be based on a Cost Sharing Agreement or Service Agreement.

As you had not entered into a cost sharing agreement or a service agreement with the government before the date of the wildfire, you do not fall within the exceptions of Policy 9.1.

I have considered your submission, in which you outlined the difficulties you are facing in your current circumstances in terms of both health and finances. Although I sympathize with your current situation, I do not feel that these are appropriate reasons for not ordering the recovery of the government's fire suppression costs. No other reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs. Although not willful, you did light a category three debris pile without a burn registration number within 1km of forest land, and failed to monitor the pile after it was lit. You failed to comply with important sections of the *Wildfire Act* and Regulations and your subsequent carelessness led to unnecessary costs incurred by government. Your acts and omissions did cause the fire and contributed to its spread and thus you should be responsible for the resulting costs.

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay \$281,587.44 for the government's fire control costs.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of Amounts Owning

My cost recovery order in the amount of \$281,587.44 must be paid by June 30, 2015, subject to the stay imposed by section 36(1) of the *Wildfire Act*. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by June 30, 2015, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest as prescribed;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien on chattels that you own or have an ownership interest in.

Payment should be made by cheque, payable to the Minister of Finance, British Columbia, and sent to Wildfire Management Branch, 2nd Floor, 2957 Jutland Road, Victoria, BC, V8W 3E7, citing file number: 23060-40-FKA-29966/K70058 (2012), Client #00165389.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to fire K70058.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 565-6193 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to Kathleen Werstiuk Manager, Risk and Litigation, Wildfire Management Branch, 2975 Jutland Road, Victoria, BC, V8W 3E7., and she must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

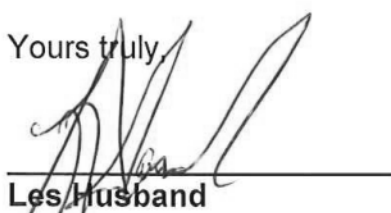
The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Yours truly,



Les Husband
Fire Center Manager
Prince George

cc: Kathleen Werstiuk, Manager Risk and Litigation
Ian Douglas, SPO-FM, Kamloops Fire Centre
Mike Pankhurst, Litigation and SDM Support
Herb Noren, Compliance & Enforcement Branch
Brad Beaupre, Compliance & Enforcement Branch
John Harkema, Compliance & Enforcement Branch
Kevin Edquist, Compliance & Enforcement Branch
John Pennington, Forest Practices Board

File: 23060-40 – K20147, K20346, K20438, K70117, K70148, K70214, K70352, K70471, K70596, C20086, G70222, R10071, R30033 (2014)

Order for Recovery of Fire Control Costs and Related Amounts

No. K20147, K20346, K20438, K70117, K70148, K70214, K70352, K70471, K70596, C20086, G70222, R10071, R30033 (2014)

Issued under section 25 (2) the Wildfire Act

June 6, 2016

Canadian National Railway Company
Risk Management, Canadian National
Operations Building A, Floor 2
10229 – 127th Avenue, NW
Edmonton, Alberta
T5E 0B9

Dear Mr. Bouffard

This is further to my letter dated March 11th, 2016 and the opportunity to be heard given to Canadian National Railway Company (CN Rail) on May 3rd, 2016 respecting the allegations that CN Rail caused certain wildfires, and is responsible under section 25 of the *Wildfire Act* for the resulting damage and associated fire control costs. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determinations and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58 (1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Page 1 of 13

Legislation

Wildfire Act

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may:

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber;
 - (ii) other forest land resources,
 - (iii) grass land resources; and
 - (iv) other propertyof the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner; and
- (c) determine the costs
 - (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire; and
 - (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in

that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of:

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the Forest Act to pay that amount;
- (b) the reasons for the order; and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Background

The Ministry is seeking to recover the government's fire control costs and be compensated for damage to its property in relation to 13 wildfires that CN Rail is alleged to have caused in 2014 (see table below). The total amount, for both fire control and damages that the Ministry is seeking is \$1,588,707.86.

| | Fire Number | Fire Control Costs and Damages |
|----|--------------------|---------------------------------------|
| 1. | K20147 | \$4,696.87 |
| 2. | K20346 | \$33,205.63 |
| 3. | K20438 | \$37,224.04 |
| 4. | K70117 | \$600.50 |
| 5. | K70148 | \$7,769.34 |
| 6. | K70214 | \$12,260.72 |
| 7. | K70352 | \$16,527.28 |
| 8. | K70471 | \$2,735.65 |

| | | |
|-----|---------------------------------|-----------------------------------|
| 9. | K70596 | \$902.40 |
| 10. | C20086 | Fire Control Costs - \$907,632.82 |
| | C20086 | Damages - \$513,619.23 |
| 11. | G70222 | \$48,119.17 |
| 12. | R10071 | \$910.35 |
| 13. | R30033 | \$2,503.86 |
| | Total Costs and Damages: | \$1,588,707.86 |

On March 11th, 2016, CN Rail was offered an Opportunity to be Heard (OTBH) in relation to the wildfires. The company requested an OTBH only in relation to the \$513,619.23 damage portion of Wildfire C20086. CN Rail did not seek an OTBH for the remaining fires or for the fire control costs associated with Wildfire C20086.

On July 13th 2014, Wildfire C20086 ignited in the Cariboo Fire Centre response area, approximately 30 kilometers northwest of Williams Lake. Approximately 45 ha of the 177 ha fire occurred on Crown land, while the remainder was on private land. All of the 45 ha Crown portion is situated within the McLeese Lake Mule Deer Winter Range and within an Old Growth Management Area.

The Ministry calculated damage costs using Vegetation Resource Inventory (VRI) data from the Ministry of Forests, Lands and Natural Resource Operations as well as determining stumpage costs under section of 103(3) of the *Forest Act* and the Interior Appraisal Manual, resulting in a total damages amount of \$513,619.23. This amount was reduced by \$131,668.55 to \$381,950.68 after the Ministry removed 16.86 ha of railway right of way land from the original calculations.

CN Rail challenged the Ministry methodology in calculating the damages associated with Wildfire C20086. The company took issue with the:

- Methodology used to determine stumpage
- Total area to determine calculations e.g. operability, burn severity
- 'Double counting' of grasslands and forest lands

Determination

Under section 25 (2) of the *Wildfire Act*, I have determined that CN Rail is the owner of the private land on which each of the thirteen wildfires originated.

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that CN Rail caused each of the thirteen wildfires.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's fire control costs on those fires was \$1,075,088.63.

Pursuant to section 25 (1) (b) of the *Wildfire Act*, I have determined that the amount that is equal to the dollar value of Crown timber, other forest land resources, grass land resources and other property of the government damaged or destroyed as a result of Wildfire C20086 is \$321,929.23.

Based on these determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require CN Rail to pay **\$1,397,017.86** to the government.

This amount must be paid by **July 15, 2016**, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- CN Rail did not dispute that it caused the thirteen wildfires.
- CN Rail did not dispute the government's fire control costs associated with the thirteen wildfires.
- CN Rail only challenged the damage costs presented by the Ministry associated with Wildfire C20086.
- Crown timber and resources were damaged and or destroyed by Wildfire C20086.
- Damages determined by the Ministry were calculated through VRI data and stumpage rates as per the March 31st, 2015 memo signed by the former A/Director, Timber Pricing Branch.
- No post fire field assessment on Wildfire C20086 was undertaken by the Ministry or CN Rail.

Ministry staff presented the following evidence in relation to damages associated with Wildfire C20086:

- An amended response to CN Rail April 26th, 2016 Report, removing 16.86 ha of railway right of way from the damage calculations, removal of immature timber from stumpage calculations and a revised area for Ungulate Winter Range and grassland value.

- Assessment of habitat impacts of 2014 Fire C20086 report.
- Description of the methodology and process of determining stumpage costs.

In turn, the following evidence was presented on behalf of CN Rail:

- Written submission citing alternative amounts payable under section 25(1) (b) of the *Wildfire Act* in respect of Wildfire C20086.
- Supporting material with respect to Wildfire C20086. This included relevant provisions of Acts and regulations, appraisal manuals, Director Procedures for calculating stumpage, previous case history and determinations.

Consideration of the evidence and findings of fact

Having regard to all of the evidence, I have made the following findings:

Calculation of stumpage on mature timber

- With respect to the calculation of stumpage on mature Crown timber, I agree with CN Rail's argument that the method of calculating stumpage rates outlined in the March 31st 2015 memo from the A/Director Timber Pricing Branch should not be followed.
- Section 105 (1) (c) of the *Forest Act* provides that if stumpage is payable to the government under section 103 (3) for damaged or destroyed timber, the rates of stumpage must be determined in accordance with the policies and procedures approved by the minister. The Interior Appraisal Manual embodies the relevant policies and procedures for calculating stumpage in the Interior of British Columbia. However, section 103 (3) (a) of the *Forest Act* provides that the rate of stumpage is that which would likely have applied to the timber under section 105 (1) if rights to the timber had been granted under an agreement entered into under the *Forest Act*.
- Amendment 6.10 to the Interior Appraisal Manual, 2014, states that "Stumpage for the purposes of section 103(3) of the *Act* must be calculated in accordance with the procedure approved by the Director. The stumpage rate is fixed". While the A/Director's memo, which purports to set the stumpage rates for timber under section 103 (3), was issued pursuant to amendment 6.10 of the Interior Appraisal Manual, which was itself developed pursuant to 105 (1) (c) of the *Forest Act*, I find that the memo is contrary to the direction in section 103 (3) (a) of the *Forest Act* stipulating that the rate of stumpage is that which would likely have applied to the timber *if rights to the timber had been granted under an agreement entered into under the Forest Act*. In my view, setting a fixed rate of stumpage for timber assessed under section 103 (3) is not determining the rate of stumpage that

would likely have applied if rights to the timber had been granted under an agreement, unless the rate chosen can also be applied to an actual *Forest Act* agreement.

- Timber Pricing South Area recalculated the stumpage using a methodology from the 2014 Interior Appraisal Manual, exclusive of amendment 6.10 and the A/Director's memo. The process undertaken is more complex and site specific, based on what would likely have applied if rights to the timber had been granted under an agreement entered into under the *Forest Act*, resulting in a slightly lower stumpage rate and damages calculation for mature timber in the amount of \$141,929.23.

Inoperable areas

- CN Rail submitted that stumpage should not be charged in respect of areas in which timber would never have been harvested.
- In my view, stumpage should be calculated on all Crown timber damaged or destroyed without authority. The use of the *Forest Act* section 103 (3) stumpage methodology as prescribed in section 30 of the Wildfire Regulation is simply a method for determining the *value* of mature Crown timber damaged or destroyed without authority. There is no requirement that the timber be harvestable. The prescribed approach is hypothetical in nature; to determine the value of mature timber based on what would likely have applied if rights to the timber had been granted under an agreement. The fact that rights to the timber might never have been actually granted, for any number of reasons, does not mean that the timber should not be valued or that the government should not be compensated for its loss. Section 30 of the Wildfire Regulation and *Forest Act* section 103 (3) are intended to compensate the Crown for mature timber losses, not lost revenue from foregone stumpage.

'Double counting' of grass land and forest land

- The Ministry assessed and applied two different damage costs to the same area resulting in what CN Rail described as double counting.
- While it would appear that section 30 of the Wildfire Regulation permits the assignment of value for different resources and property situated in the same area according to how they are classified under section 30, in this case, I agree with CN Rail that 1.6 ha of grass land resources has been double counted as both forest and grass land when it should not have been. As a result of this, I have excluded 1.6 ha of grass land resources from the overall damage costs

Severity of damage or destruction

- In my view, in future cases, the Ministry should consider fire severity mapping and post fire analysis in determining the extent of damage and destruction of Crown timber, grass land and other forest land resources.
- Based on the report entitled *Assessment to Habitat Impacts of 2014 Fire C20086 (Soda Creek)* and associated photos, there is evidence to suggest that the area experienced a variety of fire intensities, resulting in a somewhat mosaic landscape. The report suggests that not all of the area was damaged or destroyed by wildfire. I find, therefore, that a reduction in coverage should occur when calculating damages associated with grass land and other forest land resources under section 30 (c) of the Wildfire Regulation.
- Based on the limited evidence provided, I am reducing the area of protected Crown land damaged or destroyed by 20% and have recalculated the protected area from 45 ha down to 36 ha.

Government's fire control costs

Under section 25 (2) of the *Wildfire Act* I may require, by order, CN Rail to pay to the government its costs of carrying out fire control on Wildfires K20147, K20346, K20438, K70117, K70148, K70214, K70352, K70471, K70596, C20086, G70222, R10071 and R30033.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the Wildfire Regulation and find that those circumstances do not apply to CN Rail as the company is not the holder of a forest agreement or licence under the *Forest Act* and has not entered into a cost sharing agreement or service agreement with the government prior to the government carrying out fire control.

I have also considered Ministry Policy 9.1, entitled *Fire Control Responsibilities and Costs*, effective April 13, 2012, as it pertains to cost recovery. That policy indicates the following at paragraph 15:

15. Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier or leaseholder caused or contributed to the fire or spread of the fire. (*Wildfire Act* s. 25, Wildfire Regulation s. 31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order CN Rail to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25 (2) of the *Wildfire Act*, that it is appropriate to order CN Rail to pay the government's fire control costs of \$1,075,088.63.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

| | |
|--|-----------------------|
| • Hourly wages and overtime wages of responding employees | \$172,923.72 |
| • Distance charges for use of government and private vehicles | \$13,737.41 |
| • Food, transportation and accommodation expenditures | \$16,075.18 |
| • Costs for expendable supplies and materials consumed | \$6,447.39 |
| • Air tanker fuel costs and flight costs | \$98,621.54 |
| • Helicopter fuel costs and flight costs | \$248,828.84 |
| • Aircraft basing charges (preparedness) for contracted aircraft | \$0 |
| • Retardant and other suppressant costs | \$122,016.65 |
| • Rent on use of equipment | \$47,870.00 |
| • Replacement, repair or cleaning of damaged or used vehicles or equipment, directly resulting from the fire control | \$787.17 |
| • Private goods and services contracted, hired, rented or purchased | \$168,401.50 |
| • Investigation, research and analysis services related to: | \$0 |
| ○ post-incident evaluation, | |
| ○ contingency plan reviews, and | |
| ○ other incident follow-up activities | |
| • Consulting and other professional charges | \$0 |
| • Rehabilitation and/or slope stabilization costs | \$0 |
| SUB TOTAL | \$895,709.40 |
| • Mandatory overhead pursuant to section 31 (b) of the <i>Wildfire Regulation</i> | \$179,379.23 |
| GRAND TOTAL | \$1,075,088.63 |

DAMAGE TO CROWN RESOURCES OR PROPERTY

Itemized particulars of damage to Crown timber, other Crown resources or Crown property

Pursuant to section 25 (1) (b) of the *Wildfire Act*, my determination of the dollar value of \$321,929.23 that was damaged or destroyed was made in accordance with section 30 of the Wildfire Regulation. It is based on the following particulars:

| | |
|--|---------------------|
| • Crown timber, mature | \$141,929.23 |
| • Crown timber, not mature | \$0 |
| • Other forest land resources | |
| ○ 36 ha x \$5,000/ha (protected area) | \$180,000.00 |
| • Grass land resources 0 ha x \$500/ha | \$0 |
| • Other property (replacement value) | \$0 |
| • TOTAL | \$321,929.23 |

Stay of order

Pursuant to section 36 (1) of the *Wildfire Act*, my cost recovery order made under section 25 (2) is stayed until CN Rail has no further right to have the order reviewed or appealed.

Payment of amounts owing

My cost recovery order in the amount of **\$1,397,017.86** must be paid by **July 15, 2016**, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, referred to above. Under section 36 (1), if CN Rail commences a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 15, 2016, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- a) Bears interest at the prescribed rate;
- b) May be recovered in a court as a debt due to the government; and
- c) Constitutes, in favour of the government,

- i. a lien on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by CN Rail and
- ii. a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by CN Rail.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve CN Rail from any other actions or proceedings that the government is authorized to take with respect to the above-noted fires.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at (250) 951 4244 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of CN Rail, and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on CN Rail's behalf;
- b) The address for serving a document on CN Rail or the person acting on its behalf;
- c) The new evidence that was not available at the time this determination was made; and
- d) A statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
Manager, Wildfire Risk
BC Wildfire Service
2nd Floor, 2957 Jutland Road
Victoria, BC
V8T 5J9

The request must be received **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **three week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by a representative of CN Rail, and must contain:

- a) CN Rail's name and address; and the name of the person, if any, making the request on its behalf.
- b) The address for serving a document on CN Rail or the person acting on its behalf.
- c) The grounds for appeal;
- d) A copy of this determination letter; and
- e) A statement of the relief requested.

The Forest Appeals Commission must receive the appeal **no later than thirty days** after the date this notice of determination is given or delivered to CN Rail.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 140.1 through 140.7 of the *Forest and Range Practices Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC
V8W 9V1

Please note the **thirty day time limit** for delivering a notice of appeal.

Yours truly,



Chris Hodder
Deputy Fire Centre Manager
Coastal Fire Centre

cc: Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service
Ian Meier, Director, Wildfire Management, BC Wildfire Service
Mark Haddock, Forest Practices Board
Laurence Bowdige, Recovery Officer, BC Wildfire Service
Brad Martin, SPO-Prevention, BC Wildfire Service
Brent Bye, SPO-Prevention, BC Wildfire Service
Sharon MacDonald, SPO-Prevention, BC Wildfire Service
Lisa Hudema, A/SPO-Prevention, BC Wildfire Service



File: 23060-40/FSO-29938_2011_N70113
Client#: 00032598

Order for Recovery of Fire Control Costs and Related Amounts

No. FSO-29938_2011_N70113

Issued under section 25 (2) the Wildfire Act

May 17, 2013

To: Dale Cisecki, Claims Manager
Canadian Pacific Railway
CPR General Claims Division
Suite 920, 401 – 9th Avenue SW

This is further to the Notice of Investigation under the *Wildfire Act* letter dated June 18, 2012 from Natural Resource Officer (NRO) Keith Roenspiess, respecting the allegation that you may have caused or contributed to the spread of the 2011 wildfire N70113 near Kitchener BC. It is my understanding that this letter was accompanied by a Wildland Fire Cause/Investigation Report and a Fire Suppression Billing Information form. I am also in receipt of an email response to NRO Roenspiess that you provided on August 21, 2012 entitled "Fire No. N70113-2011 - Right-Of-Way Fire M. 53.80 Nelson Subd. Creston, BC July 12/20".

You have indicated in your correspondence with NRO Roenspiess that Canadian Pacific Railway (CPR) wishes to decline the Opportunity to be Heard (OTBH) in this case. You have also stated that the Fire Suppression Billing Information that was forwarded to CPR by NRO Roenspiess appears to be in line with suppressing a fire of this nature, and therefore you were awaiting additional correspondence before forwarding a cheque to the Minister of Finance to cover the Wildfire Management Branch associated fire control costs amounts identified in the Fire Suppression Billing Information form. I have concluded that it is appropriate to make the determination and order below.

Page 1 of 4

Ministry of Forests,
Lands and Natural
Resource Operations

Southeast Fire Centre

Location:
South end of Castlegar Airport

Mailing Address:
208 Hughes Road
Castlegar, BC V1N 4M5

Wildfire Management
Branch

Tel: (250) 365-4040
Fax: (250) 365-9925

Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25(3) of the *Wildfire Act*, I have determined that you did cause or contributed to the spread of the above-noted fire.

Based on that determination, by an order made under section 25(2) of the *Wildfire Act*, I require you to pay the amount of \$ 3,205.09 to the government.

This amount must be paid by June 17th, 2013 subject to the stay imposed by section 36(1) of the *Wildfire Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own; and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject to the stay imposed by section 36(1) of the *Wildfire Act*, which is referred to below.

Itemized particulars of the Government's fire control costs

Pursuant to section 25(1) of the *Act*, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars:

- hourly wages and overtime wages of responding employees, including payroll loading costs;
- distance charges for use of government and private vehicles;
- 20% of the amount determined for overhead costs;

As provided in the FS 164 Fire Suppression Billing Information.

Determination does not forestall other actions that may be taken

Please note that this order does not relieve you from any other actions or proceedings that the government is authorized to take with respect to your failure to comply with the remediation order.

Opportunity for correcting this determination

For 15 days after making this order, I am authorized under section 35(1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination, you may contact me at (250) 365-4040 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that *was not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- (a) your name and address; and the name of the person, if any, making the request on your behalf;
- (b) the address for serving a document to you or the person acting on your behalf;
- (c) the new evidence that was not available at the time this determination was made; and
- (d) a statement of the relief requested.

This request should be directed to me, at 208 Hughes Road, Castlegar, BC V1N 4M5 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 27 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- (a) your name and address, and the name of the person, if any, making the request on your behalf;
- (b) the address for serving a document to you or the person acting on your behalf;
- (c) the grounds for appeal; and
- (d) a statement of the relief requested.

The Forest Appeals Commission must receive the appeal **no later than three weeks** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedures Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

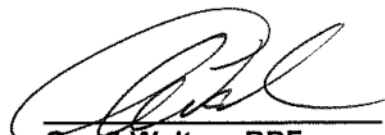
The Registrar, Forest Appeals Commission
P.O. Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **three week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal

Under section 26(1) of the *Wildfire Act*, my order under section 25(2) is stayed until you have no further right to have my determinations reviewed or appealed.

Yours truly,



Grant Walton, RPF
Fire Centre Manager
South East Fire Centre

Wildfire Management Branch
Ministry of Forests, Lands and Natural Resource Operations

CC:

Kevin Melanson
Senior Protection Officer
Southeast Fire Centre

Lyle Gawalko,
Manager of Fire Management
Wildfire Management Branch

Kathleen Werstiuk
Claims and Litigation Manager
Wildfire Management Branch

The Forest Practices Board
3rd Floor, 1675 Douglas Street
P.O. Box 9905, Stn. Prov. Govt.
Victoria, BC V8W 9R1



File: 23060-40 – K50961 (2012)

Order for Recovery of Fire Control Costs
No. K50961 (2012)
Issued under section 25 (2) the Wildfire Act

January 5, 2016

Robert Dawson
Dawson Orchards Ltd.
8855 Lawrence Way
West Vancouver, BC, V7W 2T7

Dear Sir:

This is further to my letter dated May 5, 2015 and the opportunity to be heard (OTBH) of June 22, 2015, given to Dawson Orchards Ltd. (Dawson Orchards) respecting the allegation that Dawson Orchards may have caused wildfire K50961 (2012). I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determinations and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

| | | | |
|--|--|---|--|
| Ministry of Forests, Lands and Natural Resource Operations | BC Wildfire Service Cariboo Fire Centre | 3020 Airport Road Williams Lake, BC, V2G 5M1 | Tel: (250) 989-2600 Fax: (250) 989-2672 |
|--|--|---|--|

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber,

(ii) other forest land resources,

(iii) grass land resources, and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated,

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease, or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to

be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that Dawson Orchards did cause wildfire K50961.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K50961 was \$60,794.16.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require Dawson Orchards to pay \$60,794.16 to the government.

This amount must be paid by January 26, 2016, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The evidence in this case was presented in the form of a Ministry binder. I also heard evidence from Robert Dawson and s.22 presented during the telephone OTBH held on June 22, 2015.

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- Dawson Orchards is the owner of private land legally known as Lot 1, District Lot 244 Similkameen Division, Yale District, Plan 27697, Parcel Identifier: 004-741-200 (the Property).
- Robert F. Dawson is President and Director of Dawson Orchards.
- s.22 is an employee of Dawson Orchards.
- A fire occurred on October 2, 2012 on the South East side of the Property.
- The wildfire is known as wildfire K50961.
- The Keremeos Fire Department and Wildfire Management Branch (WMB) were notified of wildfire K50961 on October 2, 2012.
- The Kamloops Fire Centre immediately mobilized fire suppression efforts, including air tanker operations to extinguish wildfire K50961.
- WMB staff continued suppression efforts until wildfire K50961 was officially declared out on November 26, 2012.
- s.22 told WMB staff on October 2, 2012 he started a fire while operating a mower on the Property.
- s.22 retraced his mowing operations on the Property with WMB staff Jim Mottishaw and showed where the mower contacted rocks after which he noticed the fire immediately started.
- Aerial photographs and a fire cause investigation further confirm the direction the fire spread and that the fire originated near the top of the Dawson Orchard, on the Property. The area burned was approximately 16.6 hectares.
- Robert Dawson stated during the OTBH that s.22 started the fire while mowing in the orchard.
- s.22 did not intentionally start the fire while mowing on the Property, and no allegations of contravention of the *Wildfire Act* or *Wildfire Regulation* were alleged.
- As a result of the government's fire suppression operations on wildfire K50961, the government incurred a cost of \$60,794.16.

Consideration of the evidence and findings of fact:

There are no facts in dispute in this case.

I conclude that the facts set out above support a finding that Dawson Orchards did cause wildfire K50961 as a result of the actions of its employee in the course of carrying out his employment duties.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|---|--------------------|
| • Hourly wages and overtime wages of responding employees | \$12,460.91 |
| • Distance charges for use of government and private vehicles | \$1972.50 |
| • Food, transportation and accommodation expenditures | \$239.53 |
| • Cost for expendable supplies and materials consumed | \$608.00 |
| • Air tanker fuel costs and flight costs | \$6337.25 |
| • Helicopter fuel and flight costs | \$8000.15 |
| • Retardant and other suppressant costs | \$11,819.60 |
| • Rent on use of equipment | \$1,872.18 |
| • Private goods and services contracted, hired, rented or purchased | \$7,351.68 |
| • SUBTOTAL | \$50,661.80 |
| • Mandatory 20% overhead charge pursuant to s.31(1)(b) of the Wildfire Regulation | \$10,132.36 |
| • GRAND TOTAL | \$60,794.16 |

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the Wildfire Regulation and find that those circumstances do not apply to Dawson Orchards as it is not the holder of a forest agreement or licence under the *Forest Act*, nor has it entered into a cost sharing agreement or a service agreement with the government.

I have also considered BC Wildfire Service Branch Policy 9.1 entitled *Wildfire Control Responsibilities and Costs*, in which the following guidance is provided at paragraph 15 on page 4:

Private Land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupant or leaseholder caused or contributed to the fire or the spread of the fire (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order Dawson Orchards to pay the government's fire control costs.

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order Dawson Orchards to pay the government's fire control costs of \$60,794.16.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until Dawson Orchards has no further right to have the order reviewed or appealed.

Payment of Amount Owing

My cost recovery order in the amount of \$60,794.16 must be paid by January 26, 2016, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if Dawson Orchards commences a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by January 26, 2016, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien on chattels that Dawson Orchards owns or has an ownership interest in.

Payment should be made by cheque, payable to the **Minister of Finance**:

c/o Kathleen Werstiuk
BC Wildfire Service,
2nd Floor, 2957 Jutland Road, Victoria, BC,
V8T 5J9

Citing file number: **23060-40 – K50961 (2012)**

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve Dawson Orchards from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at **250 989-2687** within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by a representative of Dawson Orchards, or on its behalf, and must contain:

- a. Dawson Orchards' name and address; and the name of the person, if any, making the request on its behalf;
- b. the address for serving a document on Dawson Orchards or the person acting on its behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
BC Wildfire Service,
2nd Floor, 2957 Jutland Road, Victoria, BC,
V8T 5J9

It must be received *no later than three weeks* after the date this notice of determination is given or delivered to you. If you request a review, Dawson Orchards may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, Dawson Orchards may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by Dawson Orchards, or on its behalf, and must contain:

- a. Dawson Orchards' name and address; and the name of the person, if any, making the request on its behalf;
- b. the address for serving a document on Dawson Orchards or the person acting on its behalf;
- c. the grounds for appeal;
- d. a copy of this determination letter; and
- e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

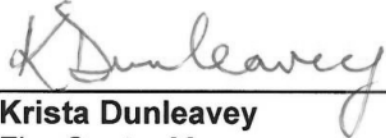
The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission.

The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Krista Dunleavy', is written over a horizontal line.

Krista Dunleavy
Fire Centre Manager
Cariboo Fire Centre

cc: Kathleen Werstiuk, Manager, Risk and Litigation, BC Wildfire Service
John Pennington, Forest Practices Board
Ian Douglas, SPO-FM, Kamloops Fire Centre
Ian Meier, Director, BC Wildfire Service
Laurence Bowdige, Recovery Officer, BC Wildfire Service

File: 23060-40-N10436 (2014)

**Order for Recovery of Fire Control Costs and Related Amounts
No. N10436 (2014) – SEFC 2015**

December 1, 2015

To: s.22

This is further to my letter dated June 17, 2015 respecting the allegation that you caused fire N10436 near Kragmont, BC. In my letter, I offered you an Opportunity to be Heard (“OTBH”), which you declined. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government’s fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

- (a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,
- (b) determine the amount that is equal to the dollar value of any
 - (i) Crown timber,
 - (ii) other forest land resources,
 - (iii) grass land resources, and
 - (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

- (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and
- (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

- (a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;
- (b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or
- (c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

- (a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,
- (b) the reasons for the order, and
- (c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire N10436 was \$30,152.93.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$30,152.93 to the government.

This amount must be paid by January 15, 2016, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The evidence in this case was presented in the form of a binder prepared by the Ministry of Forests, Lands and Natural Resource Operations. Contained within this binder, amongst other information, are statements given by s.22 where he admits to causing wildfire N10436. The statements were collected by the first onsite BC Wildfire Service Initial Attack Crew Leader, Travers Fisk, and Ministry of Environment Conservation Officer Jeff Scott ("CO Scott").

I spoke with s.22 on the morning of September 1, 2015 concerning his participation in a potential OTBH. During this conversation s.22 again took full responsibility for starting the wildfire. He expressed his sincere appreciation to his community, the Jaffray-Baynes Lake Fire Department and the BC Wildfire Service for the efforts to contain the wildfire. At that time he did not provide any new evidence, he provided no defence, and provided no disagreement with the evidence provided by the Ministry. I advised him that my determination would proceed under section 25 of the *Wildfire Act* based on the evidence provided by the Ministry.

Wildfire N10436 was first reported at approximately 12:43 pm on the afternoon of August 11, 2014. The fire was determined to have started while s.22 was working in his backyard. The first public reports of a wildfire came into the BC Provincial Forest Fire Reporting Centre in Victoria at the same time reports from the public went to the Cranbrook Regional Emergency 911 Call Centre informing both agencies of an urban interface fire in the Kragmont area. The fire was located on s.22 s private property s.22 s.22, located within the Jaffray-Baynes Lake fire response area. Firefighting resources were dispatched to the scene from both the Jaffray-Baynes Lake Fire Department and the BC Wildfire Service, which responded by air and ground. The BC Wildfire Service requested air tanker support from the Provincial Air Tanker Centre. The fire required an Evacuation Alert to be issued by the Regional District of East Kootenay, which was implemented by the local RCMP.

The BC Wildfire Service authorized the use of the fixed wing air tankers and one medium helicopter with a water bucket at the request of the Jaffray-Baynes Lake Fire Department, which was first on scene of the wildfire at approximately 1:03pm. Fire behavior was described as a vigorous ground fire. Fire indices for the day indicated that that fire could challenge ground fire suppression efforts and supported the request for aerial fixed wing retardant support. A combination of rotary wing with water bucket and fixed wing retardant drops were required to support suppression operations. Fire suppression crews declared the wildfire in containment at 4:31pm on August 11, 2014. Crews remained onsite for the remainder of the day. The fire was declared out the following evening after a final patrol was

completed. The final size of the fire was 0.9 hectares and the fire was determined to have remained on s.22's property.

On the evening of August 11, 2014, the Southeast Regional Wildfire Control Centre requested CO Scott attend the wildfire to follow up on the alleged non-compliance of the *Wildfire Act*. After interviewing s.22, during which he indicated he caused the wildfire while he was attempting to control a caterpillar infestation in a tree located on his property using a pole with a flaming rag, CO Scott issued s.22 a ticket for a violation of section 10 of the *Wildfire Act* – light, fuel or use fire against restriction. At the time of the wildfire the Southeast Fire Centre had in place an Open Fire Prohibition Order restricting the use of Category 2 and 3 fires. That Prohibition was issued on July 2, 2014 and was revised to include the use of campfires on August 5, 2014. At the time the ticket was issued, CO Scott also advised s.22 that the BC Wildfire Service may seek recovery of costs incurred by the government for fire suppression on the incident.

The Southeast Fire Centre concluded that s.22's admission was sufficient to draw a conclusion concerning the origin and cause of wildfire N10436.

I am satisfied, on a balance of probabilities, that s.22's actions on August 11, 2014 did cause the wildfire.

Consideration of the evidence and findings of fact

Based on the evidence presented, I find the following facts:

- At all material times, s.22 was the registered land owner of s.22.
- Prohibition Order # SEFC2014-001 issued to take effect at noon Pacific Daylight Time (PDT) Wednesday July 2, 2014, was in effect when wildfire N10436 occurred, and prohibited the use of Category 2 and 3 fires as described in the Wildfire Regulation.
- The landowner, s.22, admitted to starting wildfire N10436 while trying to remove caterpillars from a tree using an open flame source located on his property.
- Wildfire N10436 was located within the Jaffray-Baynes Lake Fire Department response area.
- The assistance of both the Jaffray-Baynes Lake Fire Department and BC Wildfire Service was required to contain and suppress wildfire N10436.
- The final fire size for wildfire N10436 was 0.9 hectares. The fire was contained to Mr. s.22's property.
- Violation Ticket (VT) AH44849472 was issued under section 10 of the *Wildfire Act* to s.22 on August 11, 2014 and was paid in full on August 13, 2014.
- Wildfire N10436 was declared out by BC Wildfire Service on August 12, 2014.

- The Government of British Columbia incurred fire control costs for N10436 in the amount of \$30,152.93, which includes a mandatory overhead charge of 20%.

I conclude that the facts set out above support a finding that you did cause wildfire N10436.

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the Wildfire Regulation and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act*, nor have you entered into a cost sharing agreement or a service agreement with the government.

I have also considered BC Wildfire Service Branch Policy 9.1 entitled *Wildfire Control Responsibilities and Costs*, in which the following guidance is provided at paragraph 15 on page 4:

Private land: Owners, occupants or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupant or leaseholder caused or contributed to the fire or the spread of the fire (*Wildfire Act* s.25, Wildfire Regulation s.31).

No reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs, and so I am exercising my discretion to order you to do so.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|---|--------------------|
| Wages of Personnel | 1,734.34 |
| Vehicles | 321.75 |
| Supplies & Materials | 112.00 |
| Air Tanker Fuel & Flight cost | 6,672.26 |
| Helicopter Fuel & Flight cost | 10,392.37 |
| Retardant & other Suppressant costs | 4,991.80 |
| Rental equipment | 695.18 |
| Contracted services | 207.74 |
| Subtotal | 25,127.44 |
| Overhead amount of 20% [Required under s.31(1)(b) of the Wildfire Regulation] | 5,025.49 |
| Total | \$30,152.93 |

Based on my findings in this case, I have determined, under section 25(2) of the *Wildfire Act*, that it is appropriate to order you to pay the government's fire control costs of \$30,152.93.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of Amounts Owing

My cost recovery order in the amount of \$30,152.93 must be paid by January 15, 2016, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by January 15, 2016, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest as prescribed;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien on chattels that you own or have an ownership interest in.

Payment should be made by cheque, payable to the **Minister of Finance**:

c/o Kathleen Werstiuk
BC Wildfire Service,
2nd Floor, 2957 Jutland Road, Victoria, BC,
V8T 5J9

Citing file number: **23060-40-N10436 (2014)**

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250-847-6615 or brent.martin@gov.bc.ca within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to:

Kathleen Werstiuk
BC Wildfire Service,
2nd Floor, 2957 Jutland Road, Victoria, BC,
V8T 5J9

It must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal;
- d. a copy of this determination letter; and
- e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Sincerely,



Brent Martin
Deputy Fire Centre Manager
Northwest Fire Centre

cc: John Pennington, Forest Practices Board
Kevin Melanson, SPO-FM, Southeast Fire Centre
Kathleen Werstiuk, Claims and Litigation, BC Wildfire Service
Jeff Scott, Conservation Officer, Ministry of Environment
John Harkema, Compliance & Enforcement
Ian Meier, Director, BC Wildfire Service
Laurence Bowdige, Recovery Officer, BC Wildfire Service

File: 23060-20 – FKA 27220 K51914

September 23, 2010

To: s.22

I am writing further to my order dated September 8, 2010, concerning fire K51914, in which I required you to pay \$78,331.15 to the government for recovery of the government's fire control costs.

Under section 35(1) of the *Wildfire Act*, I am able to correct any obvious errors in my order at my discretion, within 15 days after the order was made. I am of the view that I made such an error in my earlier order in that I did not have the jurisdiction under section 25(2) of the *Wildfire Act* to order you to pay the government's fire control costs in relation to the fire that you started on Crown land. I did have the requisite jurisdiction with respect to the two fires that originated on the private property situated at s.22 of which you were an occupant.



Consequently, I am correcting my earlier order to exclude the costs associated with the fire that originated on Crown land, as follows:

| Wildfire Management Program Cost Summary | Cost |
|---|--------------------|
| Wages: Preparedness | \$972.82 |
| Wages: Direct | \$2,749.53 |
| Aircraft – R/W | \$6,766.10 |
| Equipment | \$946.25 |
| Miscellaneous | \$160.00 |
| TOTAL | \$11,594.70 |

This correction does not alter any other aspect of my original order made on September 8, 2010.

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This correction takes effect on the date that you are notified of it.

If you have any questions about this correction, please contact me at (250) 25-5500.

Sincerely,

Harry Spahan
Deputy Fire Centre Manager
Kamloops Fire Centre

File: 23060-20 – FKA 27220 K51914

Order for Recovery of Fire Control Costs and Related Amounts

Issued under Section 25 (2) the Wildfire Act

September 8, 2010

To: s.22

This is further to your opportunity to be heard of March 08, 2010, respecting the allegation that you may have caused or contributed to the spread of fire K51914. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests and Range has delegated to me, under Section 58 (1) of the *Wildfire Act*, the authority to make determinations under Section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to Section 25 (3) of the *Wildfire Act*, I have determined that you did cause or contribute to the spread of the above-noted fire.

Based on that determination, by an order made under Section 25 (2) of the *Wildfire Act*, I require you to pay \$78,331.15 to the government.

This amount must be paid by October 31, 2010, subject to the stay imposed by Section 36 (1) of the *Wildfire Act*, which is referred to below.

If payment is not received by the government by this date, then under Section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and



Page 1 of 5

- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own; and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to Section 31 of the *Wildfire Act*, Section 130 of the *Forest Act* is also subject to the stay imposed by Section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under Section 25 (1) and Section 25 (3), and my order under Section 25 (2).

Summary of the evidence

Based on evidence presented by s.22 and Ministry of Forests and Range (MoFR) staff, I am satisfied that the following facts are **not** in dispute:

- You, s.22, reside and is occupant of building at s.22
Description of land: s.22
s.22
- You set two vehicles on fire on the s.22 property.
- You also ignited a fire on vacant crown land adjacent to s.22 Similkameen Division, Yale District.
- You have, in a written statement, apologized for actions on three separate fires on September 15, 2008.
- Fires have occurred on this property before this incident on September 15, 2008. There was an incident (fire K50156) on May 12, 2007, where an ATV was burned and other incidents on May 13, 2007, and June 20, 2008, which ministry crews attended.

With respect to the facts that **are** in dispute, ministry staff presented the following evidence:

- On September 15, 2008, at 12:34 hours, a call was made to the ministry reporting a fire on s.22
- With respect to the facts discovered during the fire cause investigation conducted on September 15, 2008, ministry staff presented the following evidence:
 - MoFR investigated the fire report and dispatched fire fighting resources to the scene at 12:40 hours.
 - On arrival at the scene, RCMP were on site of the incident where there were two fires burning and the RCMP were doing a search for you as you had vacated the site. While the search was being done, a third fire was noted on the hill. RCMP would not allow MoFR crews to do any fire suppression until they had made an arrest.

- Ministry staff carried out fire suppression on the fires.
- RCMP also carried out an investigation.
- Ministry staff investigated the cause and origin of the fires. This investigation discovered that the third fire was a person caused fire.
- You admitted starting this fire while you were on the Crown Land avoiding the RCMP.

Consideration of the evidence and findings of fact

I conclude that the facts set out above find you did cause or contribute to the spread of the above noted fires.

Itemized particulars of the government's fire control costs

Pursuant to Section 25 (1) (a) of the *Wildfire Act*, my determination of the government's fire control costs was made in accordance with Section 31 of the Wildfire Regulation. It is based on the following particulars:

| Wildfire Management Program Cost Summary | |
|---|--------------------|
| Item | Cost |
| Wages: Regular Staff | \$18,359.99 |
| Emergency Fire Fighters | \$613.60 |
| Equipment (Forest Service) | \$2,367.80 |
| Equipment (Rental) | \$2,368.68 |
| Travel | \$584.50 |
| Aircraft (Rotary Wing) | \$10,976.84 |
| Air Tanker | \$5,332.28 |
| Retardant | \$21,446.10 |
| Miscellaneous | \$183.29 |
| Consumable & Preparedness Equipment | \$4,872.35 |
| Administration Fee | \$11,225.72 |
| TOTAL | \$78,331.15 |

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay \$78,331.15 for the government's fire control costs for the following reasons:

- I am satisfied that you caused the fire that occurred on Crown land.
- There are witnesses who saw you start the two vehicle fires on the s.22 property.

Determination does not forestall other actions that may be taken

Please note that these determinations and my order under Section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under Section 25 (2), I am authorized under Section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 1-250-554-5500 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 4000 Airport Road, Kamloops, BC V2B 7X2 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in Section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in Sections 39 through 41 of the *Wildfire Act*, in Sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must

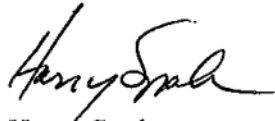
deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under Section 36 (1) of the *Wildfire Act*, my order under Section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.



Harry Spahan
Deputy Fire Centre Manager
Kamloops Fire Centre



File: 23060-40 – C20310 (2013)

**Order for Recovery of Fire Control Costs and Related Amounts
No. C20310 (2013)**

Issued under section 25 (2) of the Wildfire Act

August 6, 2015

s.22

Dear ^{s.22}

This is further to my letter dated July 7, 2015 and your opportunity to be heard of July 30, 2015 respecting the allegation that you may have caused the C20310 (2013) wildfire. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

- (i) Crown timber,
- (ii) other forest land resources,
- (iii) grass land resources, and
- (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

- (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and
- (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated,

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease, or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold

interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire C20310 (2013) was \$25,467.47.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$25,467.47 to the government.

This amount must be paid by September 15, 2015, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are not in dispute:

- Wildfire C20310 ignited on August 14, 2013 at approximately 1:55 PM on private s.22 British Columbia;
- The Registered Owners of s.22 s.22
- The BC Wildfire Service responded to the fire on August 14 and August 15, 2013 and incurred costs in suppressing fire C20310;
- The fire grew to 1.6 ha in size and burned a hayfield and spread to adjacent forested land; however, it did not cause any damage or loss to Crown forest land resources, grass land resources or other government property.
- s.22 has not entered into a cost sharing agreement or service agreement with the government.

With respect to other facts surrounding the wildfire, Ministry staff presented the following evidence:

- An origin and cause investigation conducted by Ministry fire origin and cause investigators Steve GRIMALDI and Sharon MACDONALD, determined that:
 - the origin of ignition was located within a hay field where cutting had been completed, grass was cured and raked into windrows, and baling operations were in progress.
 - the probable cause of fire C20310 was mechanical failure in the Hesston round baler unit that was used to bale windrowed and cured hay on August 14, 2013 on s.22 and was pulled by a tractor driven by s.22 at the time.
- The driver of the tractor s.22 noticed smoke coming from the Hesston round baler she was pulling behind her farm tractor. s.22 stopped the tractor and dumped the bale out of the baler. Using a water bottle, she put out the burning dry grass accumulated inside the baler unit. s.22 drove the tractor and baler to a location adjacent to s.22 Road within her hayfield. s.22 then departed the property to find assistance to suppress the fire.
- While s.22 was getting assistance, s.22 driving on s.22 Road, saw the tractor and baler sitting in the field with smoke coming from under the baler unit. s.22 stopped, scraped the accumulations of hay from under the baler and drove up into the hayfield where the fire was spreading. Upon returning from the hayfield to s.22 Road he noticed that the baler was again smoking. Using a tire iron, he scraped out accumulations from the underside of the baler.

- Upon inspection of the baler by ^{s.22} a friend of ^{s.22} Johnathon JACKSON from BC Wildfire Service found that in one of the compartments wheel bearings had worn off and were operating with metal on metal. There was a mechanical failure inside the baler unit: the wheel bearing was over-heating causing accumulations of dry grass materials to smolder, catch fire and drop into the stubble of the hay field as the tractor was being pulled through the field. It was also noted that there was an accumulation of burned and charred grass material on the outside of the baler unit.
- All other potential wildfire causes including lightning, open burning, incendiary, vehicle, smoking and miscellaneous causes of ignition were considered and excluded.
- This fire was not the result of timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation.
- The fire was in close proximity to the community of McLeese Lake and this fire was considered an interface fire requiring immediate suppression.
- As a result of the compliance investigation conducted by Natural Resource Officer (NRO) Keith JONES, it was determined there was no contravention under the Wildfire Act or Regulations. Agricultural practices do not fall under high risk activities or an industrial operation.

In turn, you presented the following evidence:

- No evidence was provided to dispute the origin and cause of the fire by ^{s.22} ^{s.22}. She did note that she had no prior notice of the bearing wearing out, such as excessive noise. She further stated that she regularly greased her tractor, but the bearing that had worn off was a sealed bearing.

Consideration of the evidence and findings of fact:

Having regard to all of the evidence, I have made the following findings with respect to the facts:

- For the cause of C20310 (2013) I accept the conclusion of the origin and cause determination that the probable cause of the fire was mechanical failure in the Hesston round baler unit that was being used to bale windrowed and cured hay on August 14, 2013 on district ^{s.22} and was being pulled by a tractor driven by ^{s.22} at the time.
- I find that ^{s.22} is an owner of district ^{s.22} and did cause fire C20310 (2013) as a result of the baling she was doing on August 14, 2013.

- I further find that this fire was not the result of timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation and, that s.22 has not entered into a cost sharing agreement or service agreement with the government.

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act*, nor have you entered into a cost sharing agreement or a service agreement with the government.

I have also considered Wildfire Management Branch Policy 9.1 entitled *Wildfire Control Responsibilities and Costs*, in which the following guidance is provided on page 5:

Private land: Owners and/or occupants of private land will be billed for fire suppression costs if it is determined that they caused or contributed to the fire or spread of the fire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

Exceptions to this will be based on a Cost Sharing Agreement or Service Agreement.

As you had not entered into a cost sharing agreement or a service agreement with the government, you do not fall within the exceptions of Policy 9.1.

No other reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs, and so I am exercising my discretion to order you to do so.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*.

After carefully reviewing the costs provided in the incident report with fire center staff involved in the incident and removing certain costs that I found to be inapplicable, I have determined that the cost to government to suppress wildfire C20310 (2013) was \$25,467.47. It is based on the following particulars, including a mandatory 20% charge for overhead:

- (i) hourly wages and overtime wages of responding employees, including payroll loading costs: \$5,721.60
- (ii) distance charges for use of government and private vehicles: \$557.20
- (iii) food, transportation and accommodation expenditures: \$109.04.
- (iv) costs for expendable supplies and materials consumed: \$346.10
- (v) air tanker fuel costs and flight costs: \$2,911.77
- (vi) helicopter fuel costs and flight costs: \$11,111.68
- (vii) rent on use of equipment: \$465.41

Resulting in a subtotal cost of: \$21,222.89

With a 20% overhead charge of: \$4,244.58

For a total cost of: \$25,467.47

Having regard to the facts of this case, and for the reasons noted above, I have decided that it is appropriate to require you to pay \$25,467.47 for the government's fire control costs.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of Amounts Owing

My cost recovery order in the amount of \$25,467.47 must be paid by September 15, 2015, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by September 15, 2015, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest as prescribed;
- may be recovered in a court as a debt due to the government; and

- constitutes, in favour of the government, a lien on chattels that you own or have an ownership interest in.

Payment should be made by cheque, payable to the Minister of Finance, British Columbia, and sent to the Wildfire Management Branch 2nd Floor, 2957 Jutland Road, Victoria, BC, V8T 5J9, citing file number: 23060-40 – C20310 (2013).

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations or order I have made, you may contact me at 250 387 5782 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time the order was made; and
- d. a statement of the relief requested.

This request should be directed to Kathleen Werstiuk, Manager Risk and Litigation, Wildfire Management Branch, 2nd Floor, 2957 Jutland Road, Victoria, BC, V8T 5J9, and she must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address, and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. a copy of this notice of determination;
- d. the grounds for appeal; and
- e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Yours truly,



Lyle Gawalko FIT, RFT
Manager, Fire Prevention
B.C. Wildfire Service
2957 Jutland, Victoria, B.C.

cc: Keith Jones, Investigator, Compliance & Enforcement Branch

File: 23060-40 – C20310 (2013)

John Pennington, Forest Practices Board
John Harkema, Compliance & Enforcement Branch
Kathleen Werstiuk, Manager, Risk & Litigation, BC Wildfire Service

File: 23060-20 – K50882 (2012)

Determination on Recovery of Fire Control Costs
K50882 (2012)
Issued under section 25 (2) of the Wildfire Act

September 2, 2015

To: s.22

This is further to my letter dated April 13, 2015 respecting the allegation that you may have caused Fire K50882 in September 2012. In that letter you were offered an Opportunity to be Heard ("OTBH") which you declined during our telephone conversation of April 23, 2015. I have now made a determination based on all the available evidence.

Authority

The Minister of Forests, Lands and Natural Resource Operations has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

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Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

- (i) Crown timber,
- (ii) other forest land resources,
- (iii) grass land resources, and
- (iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

- (i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and
- (ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated,

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease, or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause Fire K50082. However, I have also determined under section 25 (2) of the *Wildfire Act* that you will not be required to pay the government's costs of suppressing the wildfire, for the reasons described below.

Consideration of the evidence and findings of fact:

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, an Incident Summary and a Compliance & Enforcement Continuation Report (the "Report") completed by Compliance & Enforcement Officers Carter and Kohlhauser. The Report indicates that the C&E officers located and observed the point of origin with the local Fire Department Chief,

and further indicates that the cause of the fire was the result of a flail mower striking a rock and causing sparks, igniting the grass.

In addition, the Report summarizes a conversation with the operator of the mower, s.22 confirmed that the mower he was operating while cutting grass in his orchard hit some rocks and sparked a fire. Despite his efforts to suppress the fire, it spread faster than he could deal with. He ran to the house to call 911, and returned to fight the fire with shovels and farm workers.

The Report indicates that the C&E officers determined that the Ministry would not pursue any contraventions of the *Wildfire Act*, in part, because agricultural mowing does not meet the definition of a "high risk activity" in the *Wildfire Regulation*.

According to the Report, at approximately 19:00 hours on September 13, 2012, the Keremeos Fire Department responded to a 911 call reporting Fire K50882. The Keremeos Fire Department subsequently called for assistance from the Kamloops Fire Centre. At approximately 19:35 hours on September 13, 2012, the Kamloops Fire Centre began deploying crews to the fire.

I spoke to s.22 on April 23, 2015 via telephone concerning his attendance at an OTBH. s.22 indicated that he did not wish to attend an OTBH. During this phone call, he confirmed that the fire in question was caused by his mowing activities on September 13, 2012. He explained that he had admitted to causing the fire, tried to suppress the fire, and reported the fire immediately s.22 re-iterated that the fire was an accident. He also indicated that the C&E officers had indicated the fire was accidentally caused, and that there would be no further action. s.22 indicated that he was no longer in the orchard business, s.22 s.22 as a result of the incidents that occurred on September 13, 2012.

According to s.22 there were no instructions or warning, either verbally, or in writing that would alert him to the fact that he might be held responsible for the costs of suppressing the fire. There was no evidence within the Ministry binder that would indicate that the Ministry provided any form of notice to him pertaining to possible cost recovery under section 25 of the *Wildfire Act*.

I am satisfied that the evidence as provided in the Ministry binder, and in discussion with s.22 I, demonstrates on a balance of probabilities that Fire K50882 did originate on the leased property as result of sparks produced from the flail mower operated by s.22

Based on all of the evidence, whether specifically referred to here or not, I am satisfied that the following facts are not in dispute:

- The wildfire originated on private land known as s.22 which was leased to s.22
- s.22 was operating the flail mower which caused sparks to ignite the fire as a result of contact with rock.

- s.22 attempted to fight the fire, and called 911 when the fire escaped his control efforts.
- s.22 did not cause the fire intentionally.
- The wildfire spread to adjacent Crown land.
- The Keremeos Fire Department was the first responder, and soon after called in the Kamloops Fire Centre for assistance.
- The Ministry carried out fire control on the wildfire.
- The government did not suffer any damage or destruction of its property.
- No notice was given to s.22 concerning his potential liability for the costs of fire suppression until March, 2015 when he was invited to attend an OTBH on the matter.

I have considered Wildfire Management Branch Policy 9.1 entitled “Fire Control Responsibilities and Costs”, in which the following guidance is provided on page 4 with respect to private land:

“15. Private land: Owners, occupants, or leaseholders of private land may be billed for fire control costs if it is determined that the owner, occupier, or leaseholder caused or contributed to the fire or the spread of the fire”.

Appendix A of Policy 9.1 contains a Table that also indicates fire control costs “may be pursued” if the owner, occupant, or leaseholder of private land caused or contributed to the fire or its spread.

These portions of Policy 9.1 reiterate the authority and discretion given to the Minister under section 25 of the *Wildfire Act* to order an owner, occupant, or leaseholder of private land who caused or contributed to a fire or its spread to pay the government’s fire control costs.

Paragraph 13 of Policy 9.1 indicates that “cost recovery will not be pursued” from a local government when the Ministry is supporting the local government in carrying out fire control within an area of local fire department jurisdiction, unless “the local government was found to be willful or negligent”. That paragraph of Policy 9.1 is not engaged here as the issue in the present case does not concern the recovery of costs from the local government; however, it is worth noting that fire control costs are not recovered from local governments in the absence of negligence or willfulness, and further, that Fire K50882 did occur within the jurisdiction of a local fire department.

Based on my evaluation of all the evidence, I find that the billing of fire control costs should not be ordered in this case for the following reasons:

- The fire was ignited accidentally and s.22 was not negligent.

- In my view, the level of risk associated with Fire K50882 would have been extremely difficult for a person with s.22 level of experience with wildfires to foresee. Although a person in Mr. s.22 position might be expected to recognize the possibility of a fire being started as a result of a mower blade striking a rock in dry, grassy conditions, I do not think a person in his position would be sufficiently familiar with aggressive fire behavior – with the speed and intensity with which such a fire can spread – to be able to adequately foresee the consequences of a potential fire start. I accept the fact that agricultural mowing constitutes some level of risk in periods of high fire hazard, but also acknowledge that such mowing is common practice in the agriculture industry and is not included as a “high risk activity” under the Wildfire Regulation at any time of the year, unless it is done to clear or maintain a right of way, typically in the context of forestry or oil and gas operations. Accordingly, I would not have expected s.22 to have equipped his tractor/flail mower with fire suppression equipment and do not believe that doing so is standard practice in the farming community.
- This is not a case where a person lit, fueled or used an open fire and was thereby required by law to take certain precautions and meet certain conditions to ensure the fire does not escape. Nor is this a case in which an “industrial activity” as defined under the *Wildfire Act* was taking place and had to be carried out in a regulated manner. This was an accidental fire ignition by a person carrying out a farming practice with relative due care.
- s.22 made best efforts to suppress the fire and when he found he could not, he phoned 911 to request assistance and continued to fight the fire with the help of farm workers. This was a responsible and reasonable sequence of actions.
- In my view, s.22 had a reasonable expectation that because his leased land was in an area served by a local fire department, the fire department would be able to deal with a fire that was beyond his ability to extinguish.
- In considering the steps taken by s.22, his level of experience in dealing with wildfires, and the location of his leased property, I find that he met a reasonable standard of care in the circumstances.
- I find that s.22 was left with the impression that he would not be held responsible for the government’s fire control costs. It is standard Ministry practice for a notice to either be posted at the site of a wildfire or given to the person responsible indicating that the fire is under investigation and that charges may be pending. That was not the case here, as C&E officers were satisfied that no contraventions had occurred. The uncontradicted evidence of s.22 is that he was advised by C&E officers that no further actions

would be taken. It may be that s.22 was told by C&E officers that no contraventions of the *Wildfire Act* or Regulation would be pursued against him and that he interpreted that to mean no further actions of any type would be taken, including cost recovery. The wildfire occurred in September, 2012. No notice was given to s.22 until March, 2015 that he might be held accountable for the government's fire control costs, when he was invited to attend an OTBH to present his views in the matter. Although this in itself would not be enough to persuade me not to order the payment of fire control costs, as he still had time to prepare for the hearing, it is one of the considerations that weigh against doing so.


As I am not making an order with respect to the payment of fire control costs there is no need to set out the particulars of those costs, which, according to the information submitted to me by the Ministry, amounted to \$99,353.82.

Further, as I have not made an order under the *Wildfire Act*, the review and appeal procedures under that Act are not available to you. If you do not agree with my determination, judicial review may be an option open to you after obtaining independent legal advice.

Determination does not forestall other actions that may be taken.

Please note that this determination does not relieve you from any other actions or proceedings that the government is authorized to take with respect to Fire K50882.

Yours truly,



John Knapik
Deputy Fire Centre Manager
Southeast Fire Centre

cc: Forest Practices Board
Compliance & Enforcement Branch

File: 23060-20 - FSO 27071/ Fire N10076/2008
Client #00032598

**Order for Recovery of Fire Control Costs and Related Amounts No.
N10076/2008**

Issued under section 25 (2) the Wildfire Act

June 16, 2009

To: Canadian Pacific Railway
Suite 920 Gulf Square
401 – 9th Ave SW
Calgary, Alberta T2P 4Z4

Dear Sir:

This is further my letter dated March 2, 2009 and your submission for the opportunity to be heard of May 12, 2009 respecting the allegation that you may have caused Fire N10076 at or near CPR Mile Maker 30 of the Cranbrook Sub. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.

Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay **\$1,044.68** to the government.



Page 1 of 4

This amount must be paid upon receipt of invoice, to follow under separate cover, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

If payment is not received by the government by the required date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- There were no facts in dispute.
- Mr. James L. Andronikos representing Canadian Pacific Railway (CPR) acknowledged agreement to the content of the Investigation report as prepared by Cheryl Miller of the Ministry of Forests and Range.

Consideration of the evidence and findings of fact:

I conclude that the facts set out in the hearing support a finding that you did cause the above-noted fire.

The fire occurred at approximately 13:30 (PDT) hours on Friday June 20th near CPR Mile Marker 30 of the Cranbrook sub. It was discovered and reported by a staff member of the Fort Steele Heritage Park to the 1 – 800 Forest Fire reporting number at 13:38.

A Ministry of Forests and Range Initial Attack Crew was dispatched and responded to the fire, arriving on site at 15:16 (MDT). The fire was extinguished by 17:40 of the same day. Both Forest Service and CPR resources attended the fire.

Dale Baldwin and Brian Gallia, CPR employees, indicated CPR started the fire. Rail grinding was conducted on this section of the track.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order[s], you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

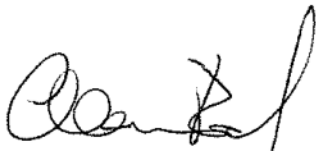
The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.



Alan Bond
Deputy Fire Centre Manager
Southeast Fire Centre

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|--------------------------|----------|
| Regular Crew Wages | \$738.48 |
| Forest Service Equipment | \$106.20 |
| Administrative Fees | \$200 |

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay **\$1,044.68** for the government's fire control costs for following reasons:

I have reduced the original cost of \$1,193.75 by \$149.07 (representing the cost of one of the Forest Officers') to \$1,044.68.

There were no additional costs for rehabilitation work, loss or damage to government property or loss to other values or agencies.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 365-4040 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order[s]*, you may request a review of the order[s] on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 208 Hughes Road, Castlegar, B.C. V1N 4M5 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

File: 23060-20 - FSO 27072/ Fire N10816/2008
Client #00032598

**Order for Recovery of Fire Control Costs and Related Amounts No.
N10816/2008**

Issued under section 25 (2) the Wildfire Act

June 16, 2009

To: Canadian Pacific Railway
Suite 920 Gulf Square
401 – 9th Ave SW
Calgary, Alberta T2P 4Z4

Attention: Jim Andronikos

This is further to the email correspondence with Al Kneeland, Ministry of Forests and Range and your submission for the opportunity to be heard of May 12, 2009 respecting the allegation that you may have caused Fire N10818 at or near CPR Cranbrook sub mile marker 102.1 of the Cranbrook Sub. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$374.63 to the government.

Page 1 of 4

This amount must be paid upon receipt of invoice, to follow under separate cover, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

If payment is not received by the government by the required date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- There were no facts in dispute.
- Mr. James L. Andronikos representing Canadian Pacific Railway (CPR) acknowledged agreement to the content of the Investigation report as prepared by the Cranbrook Fire Zone of the Ministry of Forests and Range and provided to CPR.

Consideration of the evidence and findings of fact:

I conclude that the facts set out in the hearing support a finding that you did cause the above-noted fire.

The fire occurred at approximately 12:30 hours MDT on Friday August 20th near Mile Marker 102.1 of the Cranbrook sub. It was discovered and reported by a CPR employee at 14:30 on August 20.

A Ministry of Forests and Range Initial Attack Crew and Response Officer were dispatched and responded to the fire.

Dale Marshall, CPR employee, indicated that his crew had been using an acetylene torch to cut scrap rail which created sparks, at the fire area. They left at approximately 12:30. Dale and his crew (5 total) noticed the smoke from the area they were working earlier, reported the fire and took action after refilling their water tank.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|--------------------------|----------|
| Regular Crew Wages | \$110.58 |
| Forest Service Equipment | \$64.05 |
| Administrative Fees | \$200 |

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay **\$374.63** for the government's fire control costs for following reasons:

If your crews had remained on the site for the 1 hour period as required under the Wildfire Regulation and met the Fire Watcher requirements it is likely that they would have noticed the fire at a smaller size and extinguished thereby eliminating the need for Forest Service crew response.

I have reduced the original cost of \$467.72 by \$93.09 (representing the cost of the Response Officer) to \$374.63.

There were no additional costs for rehabilitation work, loss or damage to government property or loss to other values or agencies.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 365-4040 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order[s]*, you may request a review of the order[s] on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 208 Hughes Road, Castlegar, B.C. V1N 4M5 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order[s], you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

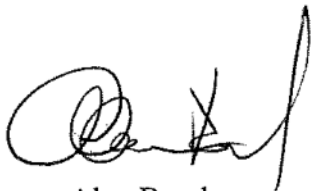
The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.



Alan Bond
Deputy Fire Centre Manager
Southeast Fire Centre

File: 23060-20 – FSO-26782/Fire N10838/2006
Client #00032598

**Order for Recovery of Fire Control Costs and Related Amounts No.
N10838/2006**

Issued under section 25 (2) the Wildfire Act

August 1, 2008

To: Canadian Pacific Railway
Suite 920 Gulf Square
401 – 9th Ave SW
Calgary, Alberta T2P 4Z4

This is further to my letter dated June 20th, 2008 and your opportunity to be heard of July 25th, 2008 respecting the allegation that you may have caused Fire N10838/2006 at Moyie Sub Milepost 27 of the Canadian Pacific Rail on September 7th, 2006. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$3,749.57 to the government.

This amount must be paid by September 10th, 2008 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

Page 1 of 5

If payment is not received by the government by this date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

Based on the evidence, I am satisfied that the following facts are **not** in dispute:

- There were no facts in dispute.
- Mr. J. Andronikos representing Canadian Pacific Railway (CPR) acknowledged agreement to the content of the Investigation report as prepared and presented by Ms. C. Miller of the Ministry of Forests and Range.

Consideration of the evidence and findings of fact:

I conclude that based on the facts set out in the hearing support a finding that you did cause the above-noted fire.

The fire occurred at approximately 13:59 MDT on Thursday Sept 7, 2006 at Mile 27 Moyie sub division. It was discovered and reported by Pat Keen (acting B&B supervisor) at approximately 14:00 MDT on Sept 7, 2006.

Don Stewart - CPR Foreman at the fire site on Sept 7, 2006 indicated that his crew cropped a joint at 1220hrs with a rail saw at mile 27. He soaked the area and then sat for approximately 20 minutes to ensure no live sparks. He then worked in that general location for approximately another 20 minutes and checked the area one more time before they left to mile 28 by high rail. At 1257 hrs he continued west past mile 28, he traveled about 2/10 mile when Pat Keen (Acting B&B supervisor) called him on the radio and asked him if he knew about the smoke he spotted from the highway that he thought was at mile 26. Don started back to mile 27 and when he arrived found a fire burning, this was at 1315hrs and he and his crew took immediate action. CPR discovered and reported this fire on Sept 7, 2006 at 1400hrs.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

| | |
|-----------------------------|------------|
| Regular Crew Wages | \$1,190.17 |
| Forest Service Equipment | \$25.00 |
| Services (contracted crews) | \$1,909.47 |
| Administrative Fees | \$624.93 |

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay **\$3,749.57** for the government's fire control costs for following reasons:

If your crews had remained on the site for the 1 hour period as required under the Wildfire Regulation and met the Fire Watcher requirements, it is likely that they would have noted the fire at a small size and extinguished thereby eliminating the need for Forest Service fire crews.

I have reduced the original cost of \$4160.31 by \$410.74 (representing costs for September 8th by the Ministry of Forests and Range Initial Attack Crew SE J) to \$3749.57.

Ms. C. Miller presented that there were no additional costs for rehabilitation work, loss or damage to government property, or loss to other values or agencies.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination.

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations I have made, you may contact me at 250 365-4040 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;

- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to me, at 208 Hughes Road, Castlegar, BC V1N4M5 and I must receive it ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.

A handwritten signature in cursive script, reading "E.A. Desnoyers". The signature is written in black ink on a white background.

E.A Desnoyers RPF
Manager
Southeast Fire Centre

File: 23060-20 – K50104 (2012)

Order for Recovery of Fire Control Costs and Related Amounts No.

K50104 (2012) – KFC 2015

Issued under section 25 (2) the Wildfire Act

15th May 2015

s.22

Dear |s.22 :

This is further to my letter dated 2nd of April 2015 and your opportunity to be heard (OTBH) of the 24th of April 2015, respecting the allegation that you may have caused wildfire K50104 on June 2nd, 2012. I have now made a determination based on all of the available evidence, and I have concluded that is it appropriate to make the determinations and order below.

Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that Act with respect to the government's fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

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Legislation

Recovery of fire control costs and related amounts

25 (1) After the government has carried out, for a fire on Crown land or private land, fire control authorized under section 9, the minister may

(a) determine the amount of the government's costs of doing so, calculated in the prescribed manner,

(b) determine the amount that is equal to the dollar value of any

(i) Crown timber,

(ii) other forest land resources,

(iii) grass land resources, and

(iv) other property

of the government damaged or destroyed as a direct or indirect result, of the fire, calculated in the prescribed manner, and

(c) determine the costs

(i) that have been or will be incurred by the government in re-establishing a free growing stand as a direct or indirect result of the fire, and

(ii) that have been incurred by the government for silviculture treatments that were rendered ineffective as a direct or indirect result of the fire.

(2) Subject to subsection (3), the minister, except in prescribed circumstances, by order may require a person to pay to the government the amounts determined under subsection (1) (a) and (b) and the costs determined under subsection (1) (c), subject to any prescribed limits, if the person

(a) is a holder of a leasehold interest, under a lease in a prescribed category of leases from the government, of the Crown land on which a fire referred to in subsection (1) originated;

(b) is an occupier of Crown land that is subject to a lease referred to in paragraph (a) who occupies the Crown land with the permission of the holder of the lease; or

(c) is an owner of the private land on which a fire referred to in subsection (1) originated or is a holder of a leasehold interest in that private land, or is an occupier of that private land with the permission of the owner or holder.

(3) The minister must not make an order under subsection (2) unless the minister, after giving the holder, occupier or owner an opportunity to be heard or after one month has elapsed after the date on which the person was given the opportunity to be heard, determines that the holder, occupier or owner caused or contributed to the fire or the spread of the fire.

(4) The minister must give written notice of an order made under subsection (2) to the person who is the subject of the order, accompanied by a copy of the order and informing the person of

(a) the amounts payable by the person to the government under the order and the person's liability under section 130 of the *Forest Act* to pay that amount,

(b) the reasons for the order, and

(c) the person's right to a review under section 37 or to an appeal under section 39, including an address to which a request for a review or appeal may be delivered.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause and contribute to wildfire K50104.

Pursuant to section 25 (1) (a) of the *Wildfire Act*, I have determined that the amount of the government's costs for carrying out fire control on wildfire K50104 was \$51,351.34.

Based on those determinations, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$51,351.34 to the government.

This amount must be paid by July 17, 2015, subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is addressed below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Summary of the evidence

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, a Fire Origin and Cause Report and statements written by Wildfire Management Branch staff and Compliance and Enforcement staff. I also heard evidence from you presented at your OTBH on April 24, 2015.

Based on the evidence, I am satisfied that the following facts are not in dispute:

- You are the owner of a property legally known as ^{s.22} shown on Plan s.22
- A fire occurred on June 2nd, 2012 in the North West corner of this property.
- The wildfire is known as wildfire K50104.
- The Keremeos Fire Department was notified of wildfire K50104 on June 2nd, 2012.
- Wildfire operations involving Crown staff and resources were dispatched to wildfire K50104 from Kamloops Fire Centre, as requested by the Keremeos Fire Department on June 2nd, 2012 at 1639.
- As a result of the government's fire suppression operations on wildfire K50104, the government incurred a cost in the amount of \$42,792.78.

With respect to the facts that are in dispute, Ministry staff presented the following evidence:

- A Fire Origin and Cause Report of wildfire K50104 (the "Report"), in which the investigator followed practices outlined in Chapter 26 - Wildfire Investigations of the National Fire Protection Association (NFPA) 921 Guide for Fire and Explosion Investigations, and followed the methodology outlined in the FI-210 Wildfire Investigations Course.

- The Report determined the origin of the fire to be a debris pile, approximately 2m by 3m in size, consisting mostly of hundreds of milk cartons used to protect the stems of young trees in your orchard. The Report states that the area appears to have been the site of previous debris burns.
- The Report indicates that you told investigators that you had dumped about 3 orchard bins full of milk cartons at this spot sometime prior to the fire start.
- The Report suggests that the milk cartons were either ignited by somebody or, most likely, that hot ashes remained from a previous debris burn, igniting the newly dumped cartons.
- The Report eliminates all other possible causes of wildfire K50104.
- The Report states that burn indicators show the fire both backed out of the debris pile and also advanced from the pile by blowing pieces of hot cardboard into surrounding grass and herbaceous material.
- The Report indicates that the wind speed was 8kph and the weather at the time of ignition was 18.2° C or 76.9° F.
- Two witness statements were provided reporting burning activities on or in the vicinity of your property on June 1st, 2012, the day before wildfire K50104 occurred:
 - s.22 indicated that sometime between 8 am and 2:30 pm while at the s.22 corner he saw a column of smoke north of s.22 that appeared to be near the upper part of an orchard, near the base of the hill.
 - s.22, a neighbor, indicated that as he drove down his driveway at 7:50 am, he noticed heavy white smoke about 20m from the gate at the back of your orchard.

In turn, you presented the following evidence:

- You have no recollection of burning any debris on your property on June 1 or 2, 2012, and specifically deny lighting a pile of milk cartons on either day.
- You described your farming operations and activities surrounding debris disposal, including open burning operations.

Consideration of the evidence and findings of fact:

Having regard to all of the evidence presented to me, including your evidence and the binder containing the Fire Origin and Cause Report, fire logs and notes, witness

statements, maps and costs associated with fire suppression operations, I have made the following findings:

- The burning of debris at particular sites on your property is not an uncommon practice.
- Based on the Report and the witness statements, I find that a debris burn did occur at the burn site located in the North West corner of your property on June 1, 2012.
- Milk cartons subsequently piled on top of that not fully extinguished debris pile by yourself or by somebody employed by you ignited in the early morning of June 2, 2012.
- Pieces of hot cardboard were blown from the burning debris pile into the surrounding grass and herbaceous material, igniting the dry fuels and spreading from there across your property.
- The ensuing wildfire was wholly contained within your property, covering an area of 5.9 ha.
- Wildfire operations involving Crown staff and resources were dispatched to wildfire K50104 from Kamloops Fire Centre, as requested by the Keremeos Fire Department on June 2nd, 2012 at 1639.
- As a result of the government's fire suppression operations on wildfire K50104, the government incurred an expense in the amount of \$42,792.78.
- You did not intentionally cause wildfire K50104; however, you did not provide any plausible alternative explanation for how the fire might have started.

I conclude that the facts set out above support a finding that you did cause and contribute to wildfire K50104.

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered the circumstances for not seeking cost recovery set out in section 29 of the *Wildfire Regulation* and find that those circumstances do not apply to you as you are not the holder of a forest agreement or licence under the *Forest Act*, nor have you entered into a cost sharing agreement or a service agreement with the government.

I have also considered Wildfire Management Branch Policy 9.1 entitled Wildfire Control Responsibilities and Costs, in which the following guidance is provided on page 5:

Private land: Owners and/or occupants of private land will be billed for fire suppression costs if it is determined that they caused or contributed to the fire or spread of the fire on their land (*Wildfire Act* s.25, *Wildfire Regulation* s.31).

Exceptions to this will be based on a Cost Sharing Agreement or Service Agreement.

As you had not entered into a cost sharing agreement or a service agreement with the government, you do not fall within the exceptions of Policy 9.1.

No other reasons have been brought to my attention for departing from Policy 9.1 or otherwise deciding not to order you to pay the government's fire control costs, and so I am exercising my discretion to order you to do so.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the Act, my determination of the government's fire control costs was made in accordance with section 31 of the *Wildfire Regulation*. It is based on the following particulars, including a mandatory 20% charge for overhead:

- Wages of personnel: \$10,539.73
- Vehicle: \$1,913.20
- Supplies and materials: \$656.00
- Food and Accommodation: \$344.14
- Aviation: \$14,653.02
- Retardant and Suppressants: \$7,419.65
- Private goods and services: \$7,267.04
- Overhead charge of 20%: \$8,558.56

For a total cost of: \$51,351.34

Having regard to the facts of this case, I have determined, under 25(2) of the *Wildfire Act*, that it is appropriate to require you to pay \$51,351.34 for the government's fire control costs.

Stay of Order

Pursuant to section 36(1) of the *Wildfire Act*, my cost recovery order made under section 25(2) is stayed until you have no further right to have the order reviewed or appealed.

Payment of Amounts Owing

My cost recovery order in the amount of \$51,351.34 must be paid by July 17, 2015, subject to the stay imposed by section 36(1) of the *Wildfire Act*, referred to above. Under section 36(1), if you commence a review or appeal of my order, the amount owing will not be payable until the completion of the review or appeal. Upon completion of the review or appeal, any amount owing will be immediately due and payable.

If the amount owing is not paid by July 17, 2015, or upon completion of a review or appeal, as the case may be, then under section 130 of the *Forest Act*, the money owed:

- bears interest as prescribed;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien on chattels that you own or have an ownership interest in.

Payment should be made by cheque, payable to the Minister of Finance, British Columbia, and sent to the Wildfire Management Branch 2nd Floor, 2957 Jutland Road, Victoria, BC, V8T 5J9, citing file number: 23060-20 – K50104 (2012).

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determinations or order I have made, you may contact me at (250) 927 3854 within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for

review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to Kathleen Werstiuk, Manager Risk and Litigation, Wildfire Management Branch, 2nd Floor, 2975 Jutland Road, Victoria, BC, V9W 3E7, and she must receive it **no later than three weeks** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal; and
- d. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal **no later than three weeks** after the date this notice of determination is given or delivered to you.

The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Yours truly,



Chris Hodder
Deputy Fire Centre Manager
Coastal Fire Centre

cc: Dan Krywonos, Investigator, Compliance & Enforcement
John Pennington, Forest Practices Board
John Harkema, Compliance & Enforcement Branch
Kathleen Werstiuk, Manager, Risk & Litigation, Wildfire Management Branch
Ian Douglas, SPO-FM Kamloops Fire Centre
Kevin Edquist, Director, Compliance and Enforcement Branch

File: 23060-40 - K30024 (2011)
00155031-00

Order for Recovery of Fire Control Costs and Related Amounts No.
K30024 (2011) –KFC 2014
Issued under section 25 (2) the Wildfire Act

April 24, 2014

To: s.22

This is further to my letter dated February 20, 2014 respecting the allegation that you may have caused Fire K30024 near Chase, BC. In that letter dated February 20, 2014 you were offered an Opportunity to be Heard (“OTBH”) and it was declined. I have now made a determination based on all of the available evidence, and I have concluded that it is appropriate to make the determination and order below.



Authority

The Minister of Forests and Range has delegated to me, under section 58(1) of the *Wildfire Act*, the authority to make determinations under section 25 of that *Act* with respect to the government’s fire control costs and the dollar value of government property damaged or destroyed as a direct or indirect result of fire, and to make orders requiring a person to pay to the government those amounts.

Determination

Pursuant to section 25 (3) of the *Wildfire Act*, I have determined that you did cause the above-noted fire.

Based on that determination, by an order made under section 25 (2) of the *Wildfire Act*, I require you to pay \$42,455.10 to the government.

This amount must be paid by June 8, 2014 subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

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If payment is not received by the government by this date, then under section 130 of the *Forest Act*, the amount owing:

- bears interest at the prescribed rate;
- may be recovered in a court as a debt due to the government; and
- constitutes, in favour of the government, a lien:
 - on any timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue that you own, and
 - on other chattels that you own or have an ownership interest in.

However, pursuant to section 31 of the *Wildfire Act*, section 130 of the *Forest Act* is also subject to the stay imposed by section 36 (1) of the *Wildfire Act*, which is referred to below.

What follows are the reasons for my determinations under section 25 (1) (a) and section 25 (3), and my order under section 25 (2).

Consideration of the evidence and findings of fact

The evidence in this case was presented in the form of a Ministry binder which contained, among other information, a Fire Origin and Cause Report and a statement written by Mr. s.22 in which he described what transpired on the days in question. I spoke with Mr. s.22 on March 11, 2014 concerning his attendance at an OTBH. At that time, he took no issue with any of the evidence presented by the Ministry that is material to my determination under section 25 of the *Wildfire Act*, other than the fact that he had a burn registration number for the debris pile fires he lit.

s.22 lit the debris piles on his property on Tuesday, April 26, 2011 and Thursday, April 28, 2011, after obtaining a burn registration number. s.22 left the piles on April 28, 2011 without extinguishing them, apparently believing them to be extinguished and contained as there had been some snow and light rain earlier. The Fire Origin and Cause Report suggests that wind levels picked up after s.22 had left the piles and that embers from the piles were blown into surrounding shrubs, causing them to ignite. The fire spread from there, eventually engulfing 8 hectares of his private land.

The fire was reported by the general public calling the Wildfire Management Branch ("WMB") Provincial Wildfire Reporting Line. The Kamloops Fire Centre responded by dispatching personnel and crews via ground and helicopter.

I am satisfied that the Fire Origin and Cause Report demonstrates, on a balance of probabilities, that the wildfire did originate from the debris piles that s.22 lit on his property.

Based on all of the evidence presented, I find the following facts:

- s.22 was the owner of the property on which he lit debris piles on Tuesday, April 26, 2011 and Thursday, April 28, 2011.
- s.22 did have a valid burn registration number for those fires.
- did not properly extinguish the fires.
- A wildfire occurred on April 30, 2011 or s.22 property.
- The debris piles lit by s.22 were the cause of the wildfire.
- s.22 did not cause the wildfire intentionally.
- The government carried out fire control on the wildfire.
- The government did not suffer any damage or destruction to its property as the fire was contained on s.22 ' private property.

I conclude that the facts set out above support a finding that you did cause the above-noted fire.

Fire Control Costs

Under section 25(2) of the *Wildfire Act*, the Minister or the Minister's delegate by order may require a person to pay to the government the government's costs of carrying out fire control on a wildfire if the person is an owner of private land on which the wildfire originated and if it is determined that the owner caused or contributed to the fire or the spread of the fire.

I have considered Wildfire Management Branch Policy 9.1 entitled Wildfire Control Responsibilities and Costs, in which the following guidance is provided on page 5:

Private land: Owners and/or occupants of private land will be billed for fire suppression costs if it is determined that they caused or contributed to the fire or spread of the fire on their land (*Wildfire Act* s.25, Wildfire Regulation s.31).

Exceptions to this will be based on a Cost Sharing Agreement or Service Agreement.

s.22 had not entered into either a Cost Sharing Agreement or Service Agreement with the Ministry before the date of the wildfire. Accordingly, he does not fall within the exceptions of Policy 9.1.

No other reasons have been brought to my attention for departing from Policy 9.1 and so I am exercising my discretion to order you to pay the government's fire control costs.

Itemized particulars of the government's fire control costs

Pursuant to section 25 (1) (a) of the *Act*, my determination of the government's fire control costs was made in accordance with section 31 of the Wildfire Regulation. It is based on the following particulars:

- Wages of personnel - \$18,117.46
- Vehicles - \$3,034.95
- Food - \$98.61
- Supplies & materials - \$968.25
- Helicopter fuel & flight costs - \$6,405.19
- Rental equipment - \$2,813.64
- Private goods & services - \$3,941.15
- Administration fee of 20% - \$7,075.85

For a total of \$42,455.10

Having regard to the facts of this case, I have decided that it is appropriate to require you to pay \$42,455.10 for the government's fire control costs.

Determination does not forestall other actions that may be taken.

Please note that these determinations and my order under section 25 (2) do not relieve you from any other actions or proceedings that the government is authorized to take with respect to the above-noted fire.

Opportunity for correcting this determination

For 15 days after making these determinations and the order under section 25 (2), I am authorized under section 35 (1) of the *Wildfire Act* to correct typographical, arithmetical, or obvious errors or omissions. I may do this on my own initiative or at your request. If you think there are valid reasons to correct the determination I have made, you may contact me at 250-847-6612 or diane.mackay@gov.bc.ca within this 15 day period.

Opportunities for review and appeal

If you have *new* information that was *not available at the time I made my order*, you may request a review of the order on the basis of this new information. A request for review must be in writing, must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the new evidence that was not available at the time this determination was made; and
- d. a statement of the relief requested.

This request should be directed to:

Lyle Gawalko
Manager of Fire Management
Wildfire Management Branch
2957 Jutland Road
Victoria BC V8W 3E7

and it must be received ***no later than three weeks*** after the date this notice of determination is given or delivered to you. If you request a review, you may appeal the decision made after the completion of the review to the Forest Appeals Commission.

The provisions governing reviews are set out in section 37 of the *Wildfire Act* and in the Administrative Review and Appeal Procedure Regulation. Please note the **3 week time limit** for requesting a review.

Alternatively, if you disagree with my order, you may appeal directly to the Forest Appeals Commission.

The appeal request must be signed by you, or on your behalf, and must contain:

- a. your name and address; and the name of the person, if any, making the request on your behalf;
- b. the address for serving a document to you or the person acting on your behalf;
- c. the grounds for appeal;
- d. a copy of this determination; and
- e. a statement of the relief requested.

The Forest Appeals Commission must receive the appeal ***no later than three weeks*** after the date this notice of determination is given or delivered to you.

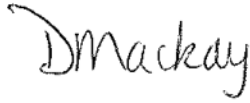
The provisions governing appeals are set out in sections 39 through 41 of the *Wildfire Act*, in sections 131 through 141 of the *Forest Practices Code of British Columbia Act*, and in the Administrative Review and Appeal Procedure Regulation. To initiate an appeal, you must deliver a notice of appeal, together with the requisite supporting documents, to the Forest Appeals Commission. The address for the Forest Appeals Commission is:

The Registrar, Forest Appeals Commission
PO Box 9425, Stn. Prov. Govt.
Victoria, BC V8W 9V1

Please note the **3 week time limit** for delivering a notice of appeal.

Determination is stayed pending review or appeal.

Under section 36 (1) of the *Wildfire Act*, my order under section 25 (2) is stayed until you have no further right to have my determinations reviewed or appealed.



Diane Mackay
Fire Centre Manager
Northwest Fire Centre

Todd Smith/Dan Krywonos, Compliance & Enforcement, Thompson Okanagan
John Pennington, Forest Practices Board
Lyle Gawalko, Manager of Fire Management, Wildfire Management Branch
Ian Douglas, SPO-FM, Kamloops Fire Centre
John Harkema, Compliance & Enforcement Branch
Kevin Edquiste, Compliance & Enforcement Branch
Kathleen Werstiuk, Manager, Claims & Litigation, Wildfire Management Branch