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Ministry of Forests

COMPLIANCE AND ENFORCEMENT

Under the forest and range practices regime, forest companies plan how they can best achieve government's objectives and outcomes. These comprehensive plans are made available for public consultation, and companies are held accountable for achieving the results and strategies they commit to. This process is backed by an improved compliance and enforcement regime and new, tougher regulations that together create one of the most comprehensive forest practices systems in North America.

Government inspects industry practices each year and has found a compliance rate of more than 90 per cent. Under the new Act and regulations, inspections will continue, backed by a strong, credible compliance and enforcement program. A record of compliance with legislation will assist B.C. companies that want to have their operations independently certified by third-party auditors.

A Stronger Compliance and Enforcement Program

The Forest and Range Practices Act sets out forest and range management requirements and objectives, while allowing licensees more flexibility in determining how best to achieve mandated results.

This places more accountability on resource professionals working for forest companies. To support this, government introduced legislation to strengthen the professional accountability of resource management practitioners.

With that change, compliance and enforcement staff can spend less time reviewing and enforcing a paper process, and more time focusing their resources on tangible results. The new Act and regulations also give government the authority to intervene before environmental damage is done – not provided for under the previous Code. To facilitate these shifts, the Ministry of Forests has restructured its compliance and enforcement program into an organization of specialized units.

The Ministry of Water, Land and Air Protection will continue to have a role in inspections, investigations and prosecutions, monitoring how effectively licensees have implemented environmental requirements of the new Act.

Stiffer Penalties

Under the Administrative Remedies Regulation, monetary penalties increase significantly; and for the first time, penalties apply to the contravention of all forestry legislation. In the past, there was no provision for monetary penalties for most contraventions of the Forest Act, the Range Act or their regulations.

Maximum fines of \$1 million and up to three years in jail remain. As well, the maximum monetary penalty has increased from \$100,000 to \$500,000. A monetary penalty is levied by a statutory decision-maker with the Ministry of Forests. By contrast, a fine is assessed by the courts where an offence has been committed.

Penalties are broken down using the following criteria:

- \$500,000 maximum – for contravention of a Ministerial Order such as cutting endangered species habitat when directed not to do so. This penalty may also be levied for submission of inaccurate information for stumpage calculation.
- \$100,000 maximum – for contraventions significantly impacting forest health, for example damage that could lead to a landslide.
- \$50,000 maximum – for contraventions relating to “key values or risks.” Examples include activities adversely affecting community watersheds or riparian (streamside) reserves, terrain, fish streams, identified wildlife and/or failure to rehabilitate an area.
- \$20,000 maximum – for contraventions that do not cause damage but could significantly increase the risk of damage, for example prohibited practices in riparian management areas.
- \$10,000 maximum – for contraventions relating to planning or process. Examples include failure to have approved plans in place, or failure to adequately reforest.
- \$5,000 maximum – for contraventions relating to administrative requirements, for example failure to submit reports or amend plans; for some contraventions, a \$2,000 maximum will apply.

Licensees alleged to have contravened legislation have three defences available to them: mistake of fact (relying on reasonably good data that is subsequently found to be flawed); officially induced error (where government mistakenly introduces the error); and due diligence (where all reasonable precautions have been taken). If a licensee can show that any of these defences apply it will not be found in contravention of the legislation, but may still be held liable for the market value of Crown timber harvested (for example), or for any other economic benefit resulting from the activity at issue.

Security for Forest and Range Practices Regulation

The Security for Forest and Range Practices Regulation allows government to require a security deposit up front. This measure not only encourages licensees to comply with its forest and range stewardship obligations, but also provides the funds needed to carry out stewardship activities, should a licensee fail to fully meet its obligations.

Failure to provide a security deposit when requested is a prosecutable offence under the Offence Act. Upon conviction, violators face a fine and/or up to two years imprisonment. In addition, violators could be subject to a penalty equal to or double the original security required.

As well, the Forest and Range Practices Act allows the security deposit requirement to be transferred if a licensee transfers harvesting or silvicultural activities to a third party – something not provided for under the Forest Practices Code. This change ensures that the party responsible for forest stewardship will also be responsible for the deposit, leading to greater compliance.

Administrative Review and Appeal Procedure Regulation

In cases where the ministry determines a party has contravened forestry legislation or regulations, it may assess “administrative penalties,” including either monetary penalties and/or remediation orders to repair damage. In most cases, the party who has been assessed the penalty may request an administrative review (conducted by ministry personnel) or an appeal (conducted by an independent tribunal of the Forest Appeals Commission).

The Administrative Review and Appeal Procedure Regulation streamlines the review and appeal process and clarifies when an administrative review is appropriate, and when an appeal is necessary. The regulation no longer requires a party to undergo an administrative review before an appeal may be launched, as was required under the Code. It clarifies that administrative reviews are only appropriate where there is new evidence that was not available at the time of the party’s “opportunity to be heard” hearing.

The regulation also ensures clarity for all parties involved in a review or appeal process. For example, the regulation ensures that parties are informed of the status of their request for review or appeal and sets out time limits.

This regulation also clarifies the role of the Forest Practices Board. While the Board will now have to obtain the consent of a party before requesting a review as a third-party intervenor, it will continue to have the ability to appeal any determination.

Forest Practices Board Regulation

The mandate of the Forest Practices Board remains largely unchanged under the results-based regime. The Board will continue to act as independent public watchdog to determine compliance with government regulations, and government’s own enforcement of those regulations. The Board conducts audits, investigates complaints, participates in appeals and produces special reports with recommendations for improving practices.

Effectiveness Evaluation of Forest and Range Practices

In addition to the compliance and enforcement regime, government and industry is committed to effectiveness evaluations to ensure the legislated requirements and objectives under the forest and range practices regime are themselves effective and comprehensive.

Specialist teams from government and industry gather field data, which is measured against objectives. By reviewing on-the-ground results against objectives, government can monitor and improves its policies, based on scientific data. These additional measures bring accountability to government’s role in the protection of British Columbia’s forest and range land assets. The results of these effectiveness evaluations will be made public and are an important part of the continuous improvement process under the results-based forest and range practices regime.

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