BRITISH COLUMBIA

April 23, 2015 File: 214486

Tim Ryan
Chair, Forest Practices Board
PO Box 9905 Stn Prov Govt
Victoria, British Columbia
V8W 9R1

Dear Tim Ryan:

On behalf of the Ministry of Forests, Lands and Natural Resource Operations (FLNRO), please accept this letter as Government's response to the Forest Practices Board's first three recommendations in its October 2014 report, "*Timeliness, Penalty Size and Transparency of Penalty Determinations*".

Recommendation 1

Establish a publicly-accessible online database of all penalty determinations under the Forest and Range Practices Act and the Wildfire Act

FLNR agrees with Board's recommendation to publicly report contravention determinations, and that such action would increase awareness and deter future contraventions by industries and the public.

Options to enable public reporting of contravention determinations are currently being discussed as part of the harmonization of compliance and enforcement provisions, including the administrative penalties regime, across natural resource legislation.

Given the scope of the harmonization project, our opportunity to implement amendments to enable public reporting may be a few years away.

Recommendation 2

By regulation, include the size of the enterprise as a required consideration for decision-makers

FLNR agrees with the Board that delegated decision-makers should consider the size of the enterprise when determining penalties for contraventions, as a means of discouraging future contraventions and motivating a higher standard of practice. Even though it is not one of the legislated factors that must be considered, the size of the enterprise is a consideration for decision-makers currently.

Ministry of Forests, Lands and Natural Resource Operations
Assistant Deputy Minister
Integrated Resource Operations
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FLNR includes this consideration in training sessions for delegated decision-makers and plans to add it to written guidance, including the annually updated 'Contravention Decision-Making under FRPA for Delegated Decision Makers' guide.

As part of the compliance and enforcement harmonization project, FLNR will consider a regulatory change to explicitly require the size of the enterprise to be considered by decision-makers.

Recommendation 3

To promote sound decision-making and consistency, government should consider reducing the number of delegated decision makers for penalty determinations so that decision makers would gain more experience

FLNR does not have any significant concerns regarding the soundness or quality of contravention determinations, or their consistency. This is largely because delegated decision-makers are well supported and trained by legal and policy advisors.

Decision-makers also have a community of practice that enables information sharing and mentoring to facilitate sound, consistent determinations. To support the community of practice, determination letters are posted to the FLNR's internal web site.

However, as part of the compliance and enforcement harmonization project, FLNR will consider options for enforcement decision-making across natural resource legislation. This phase of the project will occur once provisions for administrative penalties are harmonized, and will consider a variety of decision-making options, including narrowing down the number of delegated decision-makers.

FLNR looks forward to keeping the Forest Practices Board apprised of our progress in implementing the compliance and enforcement harmonization project and our efforts to address the Board's recommendations to improve the effectiveness of administrative penalty determinations.

In closing, if the Board has any questions or requires additional information about FLNR's initiatives to address the Board's recommendations, please contact Mike Pankhurst, Manager of Litigation and SDM Support (mike.pankhurst@gov.bc.ca) or John Harkema, Senior Provincial Resource Officer (john.harkema@gov.bc.ca).

Sincerely,

Gary Townsend
Assistant Deputy Minister

pc: Tim Sheldan, Deputy Minister

Kevin Edquist, Director, Compliance and Enforcement Branch

Reg Faubert, Director, Strategic Initiatives and Legislation Branch

Mike Pankhurst, Manager of Litigation and SDM Support, Strategic Initiatives and Legislation Branch

John Harkema, Senior Provincial Resource Officer, Compliance and Enforcement Branch

Forest Practices Board

File: 97325-20 2013-03

April 29, 2015

Gary Townsend
Assistant Deputy Minister
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9352 Stn Prov Govt
Victoria, BC, V8W 9M1

Dear Gary Townsend:

Thank you for your letter of April 23, 2015, containing the government's response to three recommendations in the Board report, *Timeliness, Penalty Size and Transparency of Penalty Determinations.*

Recommendation 1
Establish a publicly-accessible online database of all penalty determinations under the Forest and Range Practices Act and the Wildfire Act

We are pleased to see that government accepts the recommendation.

We are disappointed, though, that it may be a few years before the recommendation is implemented. This is particularly concerning given the recognition that publication would increase awareness and deter future contraventions by industries and the public. This should not take years to resolve.

While the government is considering options, the Board would be willing to post determinations on its website, so that the public has access. As you may be aware, we have copies of determinations going back to 2007, which we hold on a confidential basis. We would be pleased to discuss this proposal with your staff. We realize that it may be necessary to adopt a regulation authorizing release of determinations under the *Freedom of Information and Privacy Act* but this should be relatively easily accomplished. As we pointed out in the recommendation, this was done by the Ministry of Environment some years ago.

Recommendation 2
By regulation, include the size of the enterprise as a required consideration for decision-makers

Your letter states that the size of the enterprise is a consideration for decision-makers currently. We are not aware of any penalty determination in which the decision-maker explicitly considered the size of the enterprise in establishing a penalty amount. This is in contrast to the six factors that must be considered under FRPA s.71(5), which are always addressed in penalty determinations.

If this consideration is to be added to written guidance, we respectfully suggest that the guidance recommend that decision-makers explicitly address this in their determinations.

Recommendation 3
To promote sound decision-making and consistency, government should consider reducing the number of delegated decision makers for penalty determinations so that decision makers would gain more experience

Thank you for your response to this recommendation.

You mention the compliance and enforcement harmonization project in your letter. We are very interested in learning about this.

I would appreciate a response by June 1, 2015 to my suggestion that the Board could post determinations.

Yours sincerely,

Timothy S. Ryan, RPF
Chair

cc: Tim Sheldon, Deputy Minister
Kevin Edquist, Director, Compliance and Enforcement Branch
Reg Faubert, Director, Strategic Initiatives and Legislation Branch
Mike Pankhurst, Manager of Litigation and SDM Support, Strategic Initiatives and Legislation Branch
John Harkema, Senior Provincial Resource Officer, Compliance and Enforcement Branch

BRITISH COLUMBIA

June 8, 2015 Ref: 214882

Timothy Ryan
Chair
Forest Practices Board
PO Box 9905 Stn Prov Govt
Victoria BC V8W 9R1

Dear Timothy Ryan:

Re: Penalty Determinations Recommendations

On behalf of the Ministry of Forests, Lands and Natural Resource Operations (FLNR), I would like to take this opportunity to respond to your letter of April 29, 2015 regarding FLNR's April 23 response to the Forest Practices Board's recommendations in its report, Timelines, Penalty Size and Transparency of Penalty Determinations.

We thank the Board for its offer to publish penalty determinations on the Board's website until such time as FLNR is prepared to publish determinations on the Government's website. We respect the Board's Independence and recognize that the Board may choose to publish information in and of its own accord, in accordance with the *Freedom of Information and the Protection of Privacy Act* and the *Forest and Range Practices Act.* However, I believe it would be worthwhile to have a face to face meeting to discuss the purpose, scope, plans and timelines associated with FLNR's Compliance and Enforcement Harmonization Project, and how legislative amendments to enable public reporting of penalty determinations fits into this broader initiative.

I have asked Kevin Edquist, Director of Compliance and Enforcement, to contact Dave Clarke to arrange a meeting with appropriate FLNR and Board staff in attendance.

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Thanks again for your letter acknowledging FLNR's actions to address the Board's recommendations.

Sincerely,

Andy Calarco
for
Mary Sue Maloughney
Acting Assistant Deputy Minister

pc: Dave Clarke, Executive Director, Forest Practices Board
Jennifer Davis, Director, Resource Practices, FLNR
Kevin Edquist, Director, Compliance and Enforcement, FLNR