

File: 97250-20/060713

March 22, 2007

Re: Resolution Report on - File 060713 / MSMA Policy Development

The Forest Practices Board has completed its investigation of the two MSMA Policy Development complaints. This is the Board's report.

Nature of the Investigation

In November 2004, the Board published complaint investigation report 030500 - Nadina Beetle Treatments - which contained a number of recommendations about monosodium methanearsonate (MSMA). Following that report, the Ministry of Forests and Range (MOFR) formed a committee to help develop policy on MSMA. The committee consisted of two major licensees, British Columbia Timber Sales (BCTS), other provincial government employees, and three members of the public.

In March and April 2006, the Board received complaints from two of the public members of the committee. One had been the complainant from 030500 - Nadina Beetle Treatments and the other had initiated an appeal of the MOFR's Pesticide Use Permit (PUP) for MSMA. Both complaints said that policy development was taking too long and new information, brought forward by the Canadian Wildlife Service (CWS), was not being considered. The complainant from the previous report was also concerned that the MOFR was accommodating the timber industry's needs rather than protecting public health. The complainant who had initiated the Pesticide Use Permit appeal also asserted that:

- her input into the committee was ignored;
- the minutes of committee meetings were insufficient and missed controversial issues;
- MOFR had not identified how many trees were treated or where they are located;
- the definitions in the policy did not address the Forest Practices Board's recommendations;
- MOFR met with licensees privately but refused to respond to her input between meetings; and
- MOFR prevented her from attending a meeting with the CWS that she felt she had initiated.

Background

In January 2005, about the same time that MOFR organized the policy committee, the CWS held a workshop in Vancouver to solicit information from others who had an interest in MSMA and to share initial information about CWS' MSMA research. MOFR and both complainants attended that meeting. The results of the research were preliminary because the CWS had not completed lab work.

The policy committee met for the first time on April 26, 2005. Concurrent with policy development, MOFR conducted an internal review of MSMA use. In August, MOFR's Deputy Minister decided that MOFR would no longer use MSMA. Therefore, the major issue remaining for the committee was how to deal with legacy trees (trees that had previously been treated.) In February 2006, the CWS sent a letter to the chief forester summarizing the research results. It recommended that "future use of the pesticide should be ceased and that forest management plans should determine on a site by site basis whether old MSMA tree removal is appropriate."

The committee was to meet by conference call in March 2006 and the chair, an MOFR manager, hoped to finalize the policy at that meeting. However, surprised that MOFR had not sent the CWS letter to committee members, one complainant sent the letter to the committee in an e-mail two days before the meeting. When the CWS could not, on short notice, participate in that call, the committee chair decided to cancel it.

MOFR then arranged a meeting with CWS to review the information. MOFR entomologists on the committee wanted to ensure the information was relevant before distributing it to the entire committee. The same complainant who had sent the CWS letter to the policy group asked to be included in that meeting because she had lost confidence in the MOFR's ability to report objectively. By this time, the working relationship between MOFR and that complainant had eroded and MOFR refused her request. Subsequently, MOFR cancelled that meeting and asked CWS to send the report of the research directly to MOFR so that it could review the information. CWS released that report to MOFR at the end of July 2006.

Policy development was delayed in part because MOFR wanted to achieve a consensus on the policy. If that could be done, then licensees would be more likely to implement it. Although achieving consensus is a commendable goal, it takes time. By spring 2006, it was apparent to all on the committee that it would not achieve consensus. Therefore, MOFR decided that the chief forester should make the final decision.

Meanwhile, licensees have been operating in areas with legacy trees. The investigation found that, since the Forest Practices Board's report in November 2004, the licensees involved in the committee have had procedures to identify legacy trees and to prevent those trees from being milled. However, it is not clear if all licensees follow such procedures.

Resolution of the Complaint

At the end of January 2007, the committee held a two-day workshop. Representatives of Health Canada, Environment Canada, Canadian Wildlife Service, Ministry of Forests and Range, Ministry of Environment, licensees, the public, and staff from the Forest Practices Board attended the workshop.

A manager from MOFR's Forest Practices Branch chaired the workshop. The chair explained that the chief forester and the Assistant Deputy Minister Operations would make the final decision on the policy. The chair proposed that the workshop participants should build recommendations to give to the two decision makers. He asked that the workshop participants try to do this by consensus; an optimistic goal in the circumstances. If consensus could not be achieved, the chair asked dissenting participants to produce alternative recommendations.

Participants presented and discussed information about MSMA. They identified gaps in the research information and found that in order to formulate an environmentally correct and cost effective policy, further research was required to address those information gaps. At the same time, the committee recognized that the policy needed to be established immediately to mitigate environmental and health risks associated with the legacy trees. Therefore, the committee developed two sets of recommendations simultaneously: one set to address the research gaps and one to address legacy tree policy issues.

For the legacy tree policy issues, the committee adopted a precautionary approach. Thus, the recommendations conserved opportunities to deal with the legacy trees once the research gaps had been filled. For example, the committee identified an issue - how many legacy trees should be allowed in a wildlife tree patch? The answer depends on still-unknown information. Therefore, the committee proposed that there should be no net loss of habitat at the landscape scale as a result of licensees including legacy trees in wildlife tree patches.

The committee reached consensus at the end of the meeting, coming up with a number of solutions to deal with both research gaps and policy issues. The Forest Practices Branch will draft recommendations for research and policy from that list. The recommendations will be circulated to the group for comment before being presented to the decision makers. The workshop chair also anticipates that the decision makers will circulate the recommendations to industry before making the final decision.

Following the meeting, the complainants and MOFR agreed that the outcome of the workshop resolves the complaints. Having regard to these circumstances, I now consider that further investigation by the Forest Practices Board is not necessary. I would like to thank all who were involved in the complaint and workshop for their efforts made to resolve the issues. This concludes the investigation.

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Yours sincerely,

A handwritten signature in cursive script that reads "Bruce Fraser". The signature is written in black ink and is positioned above the typed name.

Bruce Fraser, PhD
Chair