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MAY 04 2004

Dr. Bruce Fraser, Chair
Forest Practices Board
P.O. Box 9905 Stn Prov Govt
Victoria, British Columbia
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FOREST PRACTICES BOARD	
MAY 07 '04	
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Original <u>Bruce</u>	
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	<u>Chris M</u>
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Dear Dr. Fraser:

On behalf of the Minister of Forests, please accept this letter as the ministry's response to two audit recommendations made by the Forest Practices Board in its report *Area Based Audit of Forest Planning and Practices and Enforcement in the Kispiox Forest District* (June 2003).

Recommendation 1

The Board recommends that the Ministry of Forests complete its development and implementation of policies establishing timelines for the completion of investigations and determinations related to possible contravention of the Forest and Range Practices Act.

Ministry Response

The ministry is currently developing policy guidance regarding the timeliness of investigations. This will be accomplished by amending the current Investigations Policy No. 16.6. However, we have not yet completed this amendment. Over the past two years, the ministry's Compliance and Enforcement (C&E) Program has been undergoing a reorganisation and has been developing a significant number of new policies to address government's transition from the Forest Practices Code to the Bill 75 Code to the *Forest and Range Practices Act* (FRPA). A policy guiding investigation timelines is one of many policies in the development queue, but remains a priority for completion.

C&E Branch currently has one significant investigation that is nearing completion, and the branch intends to develop this case into a complete workshop case study to impress upon C&E staff the importance of timely investigations. In the meantime, C&E Branch will communicate the intent and status of this policy initiative to all C&E staff in the near future.

With respect to the timeliness of determinations, the ministry is tracking as one of its internal performance measures the percentage of determinations made or concluded within six months of the "opportunity to be heard". C&E Branch itself has serious concerns with delays in the making of some determinations, and will be raising its concerns to the Field Services



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Management Team in the near future. The branch has also provided input into the ministry's training for statutory decision-makers, in order to emphasise to decision-makers that they are in control of the hearing process. Oftentimes, delays in the determination process are caused by the alleged contravenor asking for adjournments due to the unavailability of legal counsel or due to personal matters. Decision-makers are often too willing to accede to these adjournment requests for fear of offending the principles of natural justice. C&E Branch's input into the training for decision-makers aims to reinforce the notion that natural justice does not require decision-makers to accede to unreasonable delays at the request of the alleged contravenor.

To reinforce the ministry's internal performance measure and statutory decision-maker training, C&E Branch intends to update its Determination Policy No. 16.10 to address the timeliness of determinations.

Recommendation 2

The Board recommends that the Minister of Forests develop and implement policies addressing the acceptance of statutory obligations in the event that a licensee is unable to pursue its obligations to fruition.

Ministry Response

At this time, the ministry does not believe a policy addressing the government's acceptance of statutory obligations of bankrupt licensees is necessary. This is because decisions regarding whether to accept a licensee's obligations are infrequent and vary significantly depending on the facts of each case. Furthermore, to my knowledge, district managers and regional managers are familiar with the process and considerations involved in making such decisions, and have not requested policy guidance thus far. Having said that, the ministry will monitor this matter and consider developing a policy in future should the need arise.

Generally, decisions regarding the government's acceptance of a bankrupt licensee's statutory obligations are made on a case-by-case basis by the regional manager or ministry executives, with advice from legal counsel, the district manager, enforcement specialists, and stewardship specialists. Each decision considers the following factors in the context of the facts of the case:

1. Has bankruptcy protection resulted in a stay of enforcement action against the licensee?
2. If not stayed, will enforcement action result in the licensee remedying instances of non-compliance and fulfilling its obligations, despite the licensee's financial hardship?
3. If enforcement action has been stayed, has the licensee also been absolved of its obligations under the *Forest Practices Code of British Columbia Act* (FPC) or the FRPA?
4. If the licensee has been absolved of its FPC or FRPA obligations, is there an opportunity to negotiate a transfer of the obligations to the licensee who takes over the tenure?

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5. If there is no opportunity to transfer the licensee's obligations to another licensee, does the regional manager or ministry executive believe the obligations require urgent attention in order to remedy existing or imminent hazards to the environment or public?
6. If urgent attention is required, does the ministry have the financial resources to fulfil the licensee's obligations?
7. If urgent attention is not required, can the ministry wait for an opportunity to transfer the obligations to a third party, or fulfil the obligations at a later date when funding becomes available?

Once these factors are fully considered in the context of each case, the regional manager or ministry executives would determine whether accepting the statutory obligations of a bankrupt licensee is in the public's interest.

If the ministry decides to fulfil a licensee's obligations, the district manager may utilise security deposits obtained from the licensee as per certain licences and permits under the *Forest Act* and the *Range Act*, if the licensee's bankruptcy does not prevent government access to the deposits. For example, the Security for Forest and Range Practice Liabilities Regulation under the FRPA allows district managers to obtain security deposits from non-replacable forest licence holders to fulfil free growing obligations if the licensee fails to complete those obligations. As another example, district managers may utilise security deposits obtained from road use permit holders to fulfil outstanding road maintenance obligations. If these securities are not sufficient to fulfil the obligations, or are not accessible, the ministry may utilise funds from the remediation sub-account or attempt to obtain funds from other sources, such as the Forest Investment Account or Treasury Board.

I trust this letter addresses the Board's audit recommendations. If the Board has any questions regarding the ministry's actions to address Recommendation 1, please contact Dan Graham, Director, Compliance and Enforcement Branch, at 250-356-9785. If the Board has any questions regarding the ministry's response to Recommendation 2, please contact Tim Sheldon, Assistant Deputy Minister of Operations, at 250-387-1236.

Sincerely,



Doug Konkin, Deputy Minister

pc: Dan Graham, Director, Compliance and Enforcement Branch
Tim Sheldon, ADM, Operations



FOREST PRACTICES BOARD	
MAY 19 '04	
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Original _____	
File # 9715020/2002-04	
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	RJA ZY SD BF
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File: 23060-11/GEN

May 17, 2004

Dr. Bruce Fraser
 Chair, Forest Practices Board
 P.O. Box 9905 Stn Prov Govt
 Victoria, British Columbia
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Dear Dr. Fraser:

Please accept this letter as the Skeena Stikine Forest District's response to the Board's recommendation in its report *Area-Based Audit of Forest Planning and Practices and Enforcement in the Kispiox Forest District (June 2003)*.

Board recommendation

The Board recommends that the Skeena Stikine Forest District monitor the road maintenance and silviculture activities of C GED Forest Products Ltd., and the road maintenance of Canema Timber Ltd., and New Skeena Forest Products Inc. within its routine compliance and enforcement operation.

District response

The Skeena Stikine Forest District established compliance inspection objectives for all activities and licensees over the 2003-04 fiscal year, including the road maintenance and silviculture activities of C GED Forest Products, and the road maintenance activities of Canema Timber and New Skeena Forest Products.

The district's compliance inspections of licensee road maintenance were conducted in summer and fall 2003. As well, road maintenance issues were recorded where observed during compliance inspections of other activities. All road maintenance issues identified by our compliance and enforcement (C&E) staff were brought to the licensees' attention and



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were satisfactorily addressed by the licensees. Accordingly, we found the licensees' road maintenance activities in compliance with the Forest Practices Code. However, our C&E staff have reason to believe these licensees do not have formal road inspection and maintenance programs. Generally, they appear to rely on our compliance inspections to identify road maintenance issues they need to address.

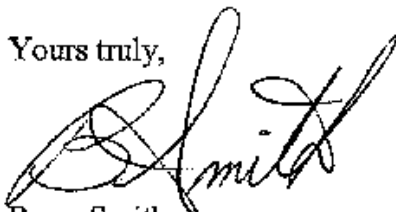
Of note, the Board should be advised that the road maintenance inspection evaluations and action plans it requested of the three licensees have not yet been submitted to the Skeena Stikine Forest District.

As well, the district has been tracking and inspecting C GED Forest Products' silviculture obligations. In March 2003, the district issued the licensee a remediation order to address silviculture obligations that were in non-compliance with the Code. The licensee failed to comply with the first remediation due date of August 31, 2003. This licence has been under suspension since July 5, 2002 due to unpaid stumpage and, since the suspension was lifted in early winter, the licensee has made an effort to comply with the remediation order.

Of note, none of the three licensees in question have current silviculture programs in place. Therefore, the district is expecting an increase in non-compliance with Code silviculture obligations. If non-compliance occurs, the ministry will take enforcement action where feasible and appropriate. However, it is likely the ministry will complete the licensees' essential silviculture obligations and recover the costs from the licensees.

We trust that this letter addresses the Board's recommendation. If the Board requires any further information, please contact the undersigned directly, at 250-847-6305.

Yours truly,



Barry Smith
District Manager