

**An Audit of the Government of
British Columbia's
Framework for Enforcement of
the Forest Practices Code**

FPB/ARE/01
December 1999

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Part 1 - Report from the Board

Introduction

During development of British Columbia's Forest Practices Code (the Code), there was public concern about whether forest companies would follow the Code and whether government would enforce it. As a result, the provincial government created the Forest Practices Board to act as an independent watchdog. The Board was given the mandate to audit the forest practices of licensees and government for compliance with the requirements of the Code. In addition, the Board was given the mandate to audit the appropriateness of government's enforcement of the Code. While the Board's forest practices compliance audit program has been developed and is being implemented, enforcement audits have yet to be undertaken by the Board.

Scope of the Audit

In order to audit the appropriateness of government's enforcement activities, the Board first had to develop an understanding of how government goes about enforcing the Code – what is the infrastructure and what are the processes government has put in place to carry out this responsibility? Accordingly, the Board embarked upon this audit of government's framework for enforcement of the Code.

The Board also had to develop an understanding of what activities and programs are part of enforcing the Code. For the purposes of this report, and the Board's enforcement audits, the terms “enforcement” and “enforcement activities” include the full range of activities that must be undertaken to ensure the Code is followed. This includes field monitoring and inspections, decisions about compliance and non-compliance, and punitive or remedial measures imposed. It also includes key aspects of the Code, such as operational plans, that affect government's ability to enforce the Code. Thus, enforcement includes both compliance and enforcement activities as described by the three Code ministries¹.

This audit consisted of two parts, first a review of the current infrastructure government ministries have in place for enforcement and second, extensive interviews with people involved in Code enforcement, both in the field and at headquarters. The starting point for the evaluation was the Code itself, as well as a document published by government in 1995 that describes how the Code ministries would enforce the legislation². The Board notes that, while the Code has been

¹ Three government ministries share responsibility for Code enforcement—the Ministries of Forests (MOF), Environment, Lands & Parks (MELP), and Energy & Mines (MEM).

² *Effective Enforcement of the Forest Practices Code*, November 1995, Government of B.C.

“streamlined” and there have been significant administrative changes to the planning provisions, the fundamental structure and intent of the legislation, as set out in the Preamble to the Code, remains the same in 1999 as it was in 1995. The public has been repeatedly advised by government that the basic purpose and main provisions of the Code are unchanged. The November 1995 document is the only publicly available statement of government intentions for Code enforcement.

The specific objectives of this audit are:

- to provide the public and the three ministers with an independent, objective assessment of government's framework for Code enforcement; and
- to establish a solid foundation for developing the Board's enforcement audits.

This is not an audit of the appropriateness of enforcement activities. The Board did not examine or reach conclusions about specific enforcement cases. Those will be the subject of the future enforcement audits, which will begin in 2000. The knowledge gained through this audit will provide a foundation for the Board to develop its program of periodic audits of the appropriateness of government's enforcement activities.

Overall Conclusion

Since the inception of the Code, government has developed a substantial infrastructure for enforcement and has done a great deal of positive work. However, the framework for Code enforcement is not yet complete and does not ensure that enforcement is effective in supporting achievement of the Code's objectives, as stated in the Preamble to the Code. Specifically:

- The ministries with responsibility for Code enforcement are not operating in a strategic, co-ordinated way. There has been a drift away from the co-managed approach to enforcement that government originally intended. The result is a significant potential for gaps in Code enforcement to occur. In addition, duplication and inconsistency in Code enforcement can result.
- A lack of unified, consistent executive leadership direction, within and between the ministries, is contributing to inconsistent approaches to enforcement of the Code.
- Higher level plans have not been legally established for most of BC, which limits government's ability to adequately enforce protection of some important resources.
- There is an inherent conflict of interest in the enforcement of the Ministry of Forests' (MOF) Small Business Forest Enterprise Program, which may create enforcement problems.

Preamble to the Code –

Whereas British Columbians desire sustainable use of the forests they hold in trust for future generations; and whereas sustainable use includes

- a) managing forests to meet present needs without compromising the needs of future generations,
- b) providing stewardship of forests based on an ethic of respect for the land,
- c) balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,
- d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
- e) restoring damaged ecologies.

Summary of Audit Findings

Adequacy of the Code as a Legislative Framework for Enforcement

The audit examined whether authority and responsibility for Code enforcement is clearly specified in the Code. It also considered whether the Code provides an adequate framework to carry out appropriate enforcement.

The Code serves as a reasonably adequate framework for enforcement.

The Code forms a reasonable base for enforcement and for the establishment of compliance and enforcement programs by the ministries responsible. However, many of the persons interviewed, who are involved with enforcement, are critical of the Code and do not think it is adequate when it comes to enforcement. These views result in some resistance to using the Code's provisions as a means of enforcement.

Without higher level plans established, the Code is not fully implemented.

One of the most important components of the Code has largely not been implemented because government has not legally established higher level plans in most parts of the province. Objectives are not legally established for some important forest resources including biodiversity, wildlife, scenic and recreational resources, etc. Consequently, these forest resources do not have to be addressed in forest development plans and their management and protection is often not enforceable under the Code. As many of these resources fall within the Ministry of Environment, Lands and Parks's (MELP) area of specific interest and expertise, the lack of higher level objectives severely limits MELP's ability to carry out its mandate under the Code.

Inter-Ministry Co-ordination and Ministry Activities

The audit assessed the appropriateness of organizational structures, and associated roles, as a foundation for carrying out effective enforcement activities, within and between the ministries.

The three ministries have not co-ordinated enforcement efforts, as was originally intended by government. Government originally intended that MOF would be the lead agency for Code enforcement, but that MELP and, to a lesser degree, the Ministry of Energy and Mines (MEM) would also have roles to play. Government developed memoranda of understanding to establish the roles and responsibilities of the three ministries in enforcing the Code. The intent was not to have the three ministries operating jointly, but for them to co-ordinate efforts to ensure the objectives of the Code were met and all areas covered by the Code were adequately enforced. That has not happened.

The Ministry of Environment, Lands and Parks' involvement in Code enforcement has been much less significant than anticipated, leading to a

risk of gaps in enforcement of the Code. MELP attributes this to the lack of legally established higher level plans and a lack of adequate funding and staffing. MELP staff also prefers to use other more familiar legislation, such as the Fisheries Act, for enforcing environmental matters. MELP initially decided to focus its efforts on reviewing operational plans and providing district managers with the best environmental information available. However, MELP is concerned that district managers sometimes do not pay adequate attention to the information and advice that it provides. As a result, MELP has recently been moving away from participating in the review of operational plans. Without MELP involvement and expertise, the Board is concerned that protection of some forest resources, such as fish and wildlife habitat and water quality, is not adequately addressed.

MELP is currently looking at restructuring and is considering options for delivery of its programs and services. However, it is apparent that the ministry has not yet co-ordinated its approach internally or externally. It has not worked with MOF or MEM in determining how best to restructure its service delivery. MELP indicated to the Board that it plans to move ahead in its own direction, but intends to communicate its plans to the other participating ministries.

The Ministry of Energy & Mines has effectively withdrawn from enforcement of the Forest Practices Code, but confusion over some responsibilities still exists. MEM was never expected to play a large role in Code enforcement, due to its limited involvement with forestry activities. MEM has now implemented the Mineral Exploration Code and no longer sees itself as an active participant in enforcing the Forest Practices Code. However, the Mineral Exploration Code, which has equivalent provisions to the Forest Practices Code, only relates to mineral claims and tenures. Government has not generally addressed the issue of responsibility for Code enforcement on access roads and power transmission line corridors constructed as part of mining exploration and development. The Forest Practices Code still regulates forest practices for mining activities within these corridors, but MEM views enforcement in those areas as the responsibility of MOF, while MOF views it as the responsibility of MEM. Consequently, no one appears to be enforcing the Code on these specific areas of Crown land.

The Ministry of Forests is the main agency undertaking enforcement of the Code. The ministry has done a credible job of setting up a corporate compliance and enforcement (C&E)³ program. Policies have been established and all districts have C&E programs in place. However, while all forest districts have implemented C&E programs, there is considerable variation in approaches between them. These variations may result in inconsistent enforcement of the Code. In addition, the ministry has not fully

³ The abbreviation "C&E programs" is used to describe the ministries' compliance and enforcement structures, programs and related staff.

identified corporate objectives and processes for measuring the effectiveness of its enforcement activities.

While MOF has developed a C&E program and is communicating with the other Code ministries at the executive level, the ministry has not sought to co-ordinate its enforcement activities in the field to support the needs of other ministries, particularly MELP. MELP's frustration and withdrawal from operational planning has been attributed to the reluctance to implement landscape units and legally establish higher level planning objectives. There is also a sense that MOF district managers often do not accept MELP input on operational planning. Consequently, MOF shares some responsibility for the risk of failures and gaps in Code enforcement occurring.

There is an inherent conflict of interest in the enforcement of the Small Business Forest Enterprise Program. The district manager is responsible for delivering the program and also for enforcing it. Our auditors have heard this concern from people working in the field and at senior levels in both MOF and MELP. While measures to mitigate this conflict have been put in place by some districts, they have not been consistently applied and do not adequately address the problem.

Executive Leadership

A significant element in ensuring an effective framework for enforcement of the Code is appropriate executive leadership, involvement and direction. Therefore, the audit examined management processes used in the ministries' C&E programs.

The necessary control over field operations is not being exercised by management, and is contributing to inconsistencies. A lack of effective direction from ministry executives has resulted in an assortment of different structures, policies and procedures in regions and districts, which contributes to inconsistent approaches to enforcement. The lack of effective direction and the lack of corporate objectives for enforcement means staff does not have the necessary guidance to develop consistent approaches to Code enforcement.

The lack of specific direction within MOF is based, in part, on a fear of fettering the discretion of district managers. MOF has broadly interpreted fettering of statutory decision-making to encompass activities not directly related to the statutory decision itself. The Board does not accept this interpretation of fettering. It should be possible for the executive to provide guidance and direction on priorities and objectives for enforcement without fettering a district manager's decisions in individual cases.

While there is communication at the executive level, there is a lack of effective inter-ministry direction to, and co-operation in, the field, potentially creating gaps and inefficiencies. Executives of the three

ministries may communicate their plans and intentions to each other, but they have not co-ordinated their business planning efforts or shared priority-setting to ensure the objectives of the Code are being met on the ground. Enforcement activities within each ministry are separate, and where co-operation does occur in the field, it is generally through the good will of the people involved, not as a result of direction or co-ordination from headquarters. The result is parallel ministry programs that the Board expects are duplicative and not the most effective use of the scarce funding and staff available.

Government has not established measures to monitor and assess its enforcement performance, which is necessary to guide improvements. The ministries are largely unable to assess the effectiveness of enforcement of the Code because they have not set objectives or developed measures against which to assess performance. Nor has government fully implemented a quality assurance program, although MOF has implemented some regional monitoring. Other than MOF's annual report on compliance and enforcement statistics, there is limited information gathered to measure the effectiveness or appropriateness of current approaches to enforcing the Code, or to identify where improvements can be made. Government's performance measurement and accountability for Code enforcement is largely absent.

Consequences

The Board is very concerned about the lack of an overall co-ordinated "government" approach to Code enforcement. Specifically, the Board is concerned that the weaknesses identified with the current infrastructure and process for enforcement of the Code create the potential for the following serious consequences:

- gaps in Code enforcement with respect to some activities and areas of land;
- inadequate protection of some forest resources;
- inequitable enforcement between forest districts;
- problems in enforcement of the Small Business Forest Enterprise Program; and
- inefficient use of government funds and personnel.

The periodic audits that the Board will be conducting in the future will examine specific enforcement activities and will assess the effect of these weaknesses.

While the audit has identified some serious deficiencies with government's current framework for Code enforcement, the Board wishes to emphasize that there has been a great deal of positive work done.

In these recommendations, the term “enforcement” includes the full range of activities that must be undertaken to ensure the Code is followed. This includes field monitoring and inspections, decisions about compliance and non-compliance, and punitive or remedial measures imposed. It also includes key aspects of the Code, such as operational plans, that affect government's ability to enforce the Code. Thus, enforcement includes both compliance and enforcement activities as described by the three Code ministries.

Recommendations

The Code has been in place for almost five years and there has been a lot of valuable experience and learning gained. It is now an appropriate time to evaluate and adjust the way enforcement of the Code is carried out.

Accordingly, the Board is making the following recommendations under section 185 of the *Forest Practices Code of British Columbia Act*:

1. The inter-ministry memoranda of understanding and Code enforcement structures should be reviewed and either reaffirmed or replaced, and the current gaps in Code enforcement should be addressed. Government's enforcement framework should:
 - ensure that all Code aspects are addressed, including all non-timber forest resources;
 - ensure that all forest practices are addressed, including those on Crown lands used for access roads and power transmission corridors associated with mining exploration and development;
 - build on the good work that has already been accomplished; and
 - consider a more co-operative (rather than just consultative) approach between ministries, especially at the field level, to make the most efficient use of the limited funds and staff all three ministries have available.
2. Government should support its field staff in delivering a credible, effective enforcement effort by ensuring adequate training, funding and staff are provided, and by encouraging prompt decision-making when Code compliance issues are identified.
3. Government should proceed with immediate implementation of higher level plans to legally establish strategic landscape level objectives. These objectives should be translated into enforceable measures so that they can be incorporated into operational plans to ensure all forest resources are adequately managed and conserved, consistent with the intent of the Code. Government should also review the Code, and make amendments if necessary, to ensure that it adequately provides for enforcement of higher-level plan objectives by requiring them to be addressed in forest development plans.
4. Ministry executives should complete the Code enforcement framework, including:
 - completing the policy framework;
 - establishing clear objectives for fair and consistent compliance and enforcement—for example, by identifying targets for percent coverage by inspections in areas of concern (e.g., steep slopes, riparian zones, new road construction);

- developing measures to monitor and assess performance of compliance and enforcement—for example, the ratio of non-compliance instances to inspections, the number of slope failures over a certain time period, the number of repeat non-compliance incidents by a licensee, etc.; and
 - improving reporting to the public about all aspects of Code enforcement.
5. The Ministry of Forests should address the inherent conflict of interest that arises because the district manager has responsibility for both management and enforcement in the Small Business Forest Enterprise Program.
- a) The ministry should, at a minimum, consistently apply its own policy that:
 - enforcement in the SBFEP should be carried out by staff who are outside the SBFEP program; and
 - regions should monitor and audit enforcement in the SBFEP.
 - b) The ministry should develop procedures to ensure enforcement in the SBFEP is consistent with that for licensees.
 - c) The ministry should develop and implement additional ways to address the district manager's inherent conflict of interest that arises because of the organizational structures within the ministry.
6. Government should re-examine its interpretation of fettering and ensure MOF's executive is providing adequate and consistent guidance to district managers to allow them to meet corporate objectives and priorities for Code enforcement, without fettering their decisions in specific cases.

This audit has provided the Board with a foundation for the periodic audits of the appropriateness of government enforcement of the Code under Part 6 that will begin in 2000. Future audits will monitor government's progress in addressing these recommendations and will report the results to the public. The Board will also report government's progress in addressing these recommendations in its annual reports.

The Board members who considered the Audit Report and prepared this Report from the Board were Keith Moore, John Cuthbert, Liz Osborn, Fred Parker, Ingrid Davis and Mark Haddock.

Part 2 - Audit Report

This report presents the findings of the Forest Practices Board's audit of government's infrastructure and process for enforcement of the Forest Practices Code. The audit was carried out, and this report was prepared, by a team including Board staff and consultants.

Introduction

Section 176(b) of the *Forest Practices Code of British Columbia Act* (the Code) requires the Forest Practices Board to carry out periodic independent audits of the appropriateness of government enforcement under Part 6 of the Code. Three ministries have authority under the Code for enforcement—Forests (MOF); Environment, Lands and Parks (MELP); and Energy and Mines (MEM).

The Board has not previously audited government enforcement activities, nor has any other independent body evaluated the state of government's enforcement of the Code. Other than the *Annual Report of Compliance and Enforcement Statistics for the Forest Practices Code*, published by the MOF, the public and interested parties have received little feedback on enforcement activities under the Code.

The Board is now proceeding with the development of an enforcement audit program. This will be achieved in three steps:

1. conduct an audit of government's enforcement framework;
2. develop an enforcement audit program, including an audit reference manual; and
3. initiate at least two pilot enforcement audits in the 2000/2001 fiscal year.

The Board determined that an audit of the current state of government's infrastructure and processes for Code enforcement was necessary before beginning to carry out enforcement audits. This is similar to an accounting firm conducting an overview of a new client's internal systems, controls and processes before conducting the first financial audit. The information and experience gained from this audit will provide the Board with a foundation for developing its enforcement audits.

Objectives

The specific objectives of this audit are:

- to provide the public and the three ministers with an independent, objective assessment of government's framework for Code enforcement; and

- to establish, for the Board, a solid foundation for developing its enforcement audits.

Scope

The audit involved reviewing and evaluating policies, processes and controls applied by those government ministries and agencies involved in Code enforcement. This also includes the Oil and Gas Commission whose clients, along with those of MEM, often carry out forest activities to gain access to their operations. The audit also looked at how government has organized itself to carry out its enforcement responsibilities under the Code, including any activities that the three ministries identified as contributing to enforcement.

Assessing the appropriateness of specific individual enforcement cases or actions was outside the scope of this audit.

Approach

The audit began in January 1999 with interviews of compliance and enforcement (C&E) staff from the three participating ministries. This included visits to the headquarters of each of the three ministries and the Oil and Gas Commission, and to regional and district offices:

MOF: All six regional offices and thirteen of forty district offices.

MELP: All seven regional offices and staff from several district offices.

MEM: All five regional offices.

During these visits, the audit team interviewed those directly involved with Code enforcement: regional and district officials, C&E field staff, fish and wildlife staff, water management staff, conservation officers and at least one licensee in each of the six forest regions. An interview working paper was used to guide the interviews. The methodology used was derived from generally accepted approaches for the evaluation of government programs. Auditors evaluated policies, processes and controls, but did not examine specific enforcement activities in the field. Before concluding the report, the audit team also interviewed assistant deputy ministers from the three ministries. Throughout the audit process, the auditors obtained and examined relevant documentation and oral evidence.

Following the interviews and analyses, the audit team developed preliminary findings and assessments. These were shared in exit meetings, involving officials of the three ministries, in six area meetings and at ministry headquarters in Victoria. Draft audit findings were provided to the three ministries for review and comment before the Board finalized its report for public release.

Results

In 1995, the Code introduced significant new directions and approaches to the enforcement of forest practices. The MOF assumed, and has maintained, an important leadership role in making the Code work. Resources were immediately allocated and new processes and models of organization were developed and piloted in MOF regions and districts. Policies, procedures and training programs were developed and made available to field managers.

The result has been a dominant role in Code enforcement on the part of MOF, and there has been a drift from government's original expectations. In reality, Code enforcement has become a MOF program, rather than a co-managed initiative, which differs from government's initial intent.

The information and experience gained from this audit has provided the Board with an understanding of government's current enforcement framework. This understanding provides the Board with a solid foundation from which to develop its enforcement audit program.

The following report sections present findings and conclusions about key elements that frame government's enforcement of the Code—statutory authorities and responsibilities established by the Code; the purpose and objectives of Code enforcement; organization and organizational structure within and between participating ministries; training of enforcement practitioners; and management direction and control.

Statutory Framework

The audit examined whether authority and responsibility for Code enforcement is clearly specified in the Code. It also considered whether the Code provides an adequate framework for the conduct of appropriate enforcement by government.

Authority and Responsibility Under the Forest Practices Code

Authority to take enforcement action is described in Part 6 of the Code. Individual ministries designate employees as “officials” and “senior officials” under the Code. Through these statutory decision-maker designations, employees of the three ministries are mandated to perform a wide range of enforcement activities under this section of the statute.

The Code specifically names Ministry of Forest's regional and district managers as senior officials with authority for enforcement. MOF C&E employees are designated as officials by the ministry.

Although all three ministries can designate employees as officials to carry out enforcement activities, no MELP or MEM staff positions are specifically identified in the Code and designations are discretionary. MELP generally designates regional fish and wildlife managers as senior officials, and forest ecosystem specialists, habitat protection officers and conservation officers as officials.

The Code defines the roles of officials for such activities as approvals of forest development plans, which take place prior to enforcement. However, the Code does not specify the expected roles of officials when it comes to enforcement. Therefore, while authority for enforcement is stated in the Code, responsibility for enforcement is not.

On mineral claims and tenures, MEM has shifted from Forest Practices Code enforcement to enforcement of the Mineral Exploration Code (MX Code), which is Part 11 of the *Health Safety and Reclamation Code for Mines in British Columbia*, under the *Mines Act*. The MX Code was established through a multi-stakeholder group that included MOF and MELP. The MX Code provides a set of regulations with equivalent provisions to the Forest Practices Code and that recognizes the different nature of mineral exploration activities relative to conventional forestry operations.

The operational effect of the above noted statutory designations has been to assign the MOF district manager a dominant mandate.

Conclusion:

Although the Code does not specify all participant roles and responsibilities with respect to compliance and enforcement, there is adequate authority under the Code for participating ministries to develop and implement their C&E programs.

The Forest Practices Code as a Framework for Enforcement

The Code is a complex, significant new approach to regulating forest planning and practices. It has introduced a range of enforcement and administrative options that were not previously available to government under provisions of other legislation. Since its inception, the Code has been treated as a “living document,” with numerous changes made to the legislation. Recent proposals for a more “results-focused“ Code may lead to further changes. These changes may require adjustments to the way government carries out Code enforcement.

Notwithstanding this evolution, many persons interviewed—within MOF, MELP and industry—are critical of the Code as a base for enforcement.

Examples of criticisms include:

- Short timelines have been established for approvals of operational plans, however, determinations related to contraventions do not, under the Code, have to be made for three years.

- The Code centres around administrative rather than judicial penalties. Some officials state that the administrative process is time-consuming and cumbersome, and that they prefer to use other legislation, such as the federal *Fisheries Act*, to direct and support their enforcement activity.
- The absence of effective legal standards and objectives precludes the potential for effective enforcement of many environmental measures under the Code.
- The Code establishes unbalanced roles for officials, particularly the overriding authority of the district manager.

A number of MELP employees expressed some of the above views as key reasons for their reluctance to use the Code as a means of enforcement. MELP has concluded that the Code provides limited enforcement authority, while many other statutes specifically provide for enforcement of violations that can and do occur in forest activities. Conservation officers generally use other provincial and federal statutes, rather than the Code, when pursuing non-compliance in areas that they identify as within their enforcement mandate.

"...currently, you can have a legal forest development plan that causes damage to the environment."

Senior MELP Official

A key component of the Code, and an important basis for enforcement, is the development of higher level land-use plans and objectives. By setting objectives for the mix of forest resources in a given area, higher level plans guide licensees' operational planning under the Code. These approved operational plans, in turn, form an important base against which government enforces.

The implementation of these higher level plans and objectives has been delayed. This hampers government's ability to enforce the Code to its originally intended level, and particularly hampers MELP's ability to enforce the protection of certain environmental values such as wildlife habitat.

Some field staff and licensees interviewed have expressed the view that a "time out" should be called on the current practice of continual changes to the Code; that a period of stability would facilitate a more orderly implementation of the Code.

Conclusions:

Although certain aspects of the Code itself may require further legislative review, despite perceptions, it does provide a reasonably adequate base for the design and implementation of C&E programs.

Government's failure to implement higher level plans represents a serious limitation to the Code and can have a significant impact on the effectiveness of enforcement activity.

Purpose and Objectives

The audit assessed the extent to which the purpose and objectives of Code enforcement are clear, understood and agreed upon by the participating ministries.

Purpose of Enforcement

When the Code was implemented in 1995, government envisioned that enforcement would be carried out by the three ministries with authority for Code enforcement. Accordingly, a joint Forest Practices Code enforcement committee and an interagency Forest Practices Code enforcement unit were approved, although the latter was never established. The publication, *Effective Enforcement of the Forest Practices Code* (November 1995) released jointly by the three participating ministries, described government's intended approach and envisaged the development of processes for co-ordinated inspections and investigations. This is the only public document that states government's intent for how the Code is to be enforced.

Although the term "enforcement" is not defined in the Code, participating ministries agree that the purpose of enforcement is to promote Code compliance. However, MOF's definition of compliance and enforcement is limited to all activities occurring after approval of operational plans, while MELP takes a broader view that includes strategic higher level and operational planning within the realm of compliance and enforcement.

The approach to Code enforcement has evolved over the past few years from an initial emphasis on "tough" enforcement to one promoting compliance. This was established through MOF's adoption of the 1997 Task Team Report⁴, which recommended that the ministry should deliver its enforcement mandate through promoting compliance. Within this emphasis on promoting compliance, there is a spectrum of possible approaches ranging from consultation and monitoring through to policing and prosecutions. The style adopted in each forest district is influenced by the philosophy of the district manager on how best to achieve compliance.

⁴ *Compliance and Enforcement Task Team Report, Review of Compliance and Enforcement Organization, Roles and Responsibilities Within Operations Division to Ensure Effective Implementation of the Quality Assurance Framework and the Code's Two-Tiered Enforcement Regime*, Ministry of Forests, July 1997.

Conclusions:

While there are some differences in enforcement interpretation and approaches, the general purpose of “promoting Code compliance” is agreed to by the ministries. This general purpose is reasonable and, if applied in a fair and consistent manner, will provide an adequate basis for Code enforcement.

Disagreement exists between the ministries about whether operational planning, and specifically forest development planning, is part of the enforcement framework. However, this disagreement will not impact the performance of Code enforcement as long as operational plans are considered in planning enforcement activities.

Enforcement Objectives and Scope

Despite a shared compliance purpose, specific objectives for compliance and enforcement have not been fully developed. Ministry managers are therefore uncertain of how to assess the performance of their C&E programs. A performance measurement framework for assessing the effectiveness of Code enforcement has not been designed and business planning is generally limited to projecting the number of inspections to be carried out.

While MOF has developed a comprehensive risk management approach under which risk assessments determine inspection levels, the frequency of inspections is still largely based on 1994 pre-Code executive direction. This process does not reflect improvements in the forest management system, such as the development of the Code or improvements in licensee performance. Further, MOF risk management and business planning processes focus primarily on roads and harvesting activities. Silviculture, range, and recreation activities are not consistently enforced under the C&E program, although some monitoring is carried out by other program staff.

There is also a range of possible interpretations about what level of non-compliance constitutes a contravention. This uncertainty is reflected in the recording and reporting of contraventions, and is a public reporting issue. All contraventions recorded in the Enforcement Action, Administrative Review and Appeal Computer Tracking System (ERA) are publicly available through freedom of information requests. As a result, only items of non-compliance that are significant enough to warrant written instruction, or other more formal action, are supposed to be entered into ERA. The majority of districts visited record notations on field inspection forms for items of non-compliance that are not considered to be significant, and follow up to ensure they are addressed in the field. However, some districts record these minor contraventions in ERA and later, once they have been addressed in the field, close the ERA file. The result is that some licensees effectively receive a

permanent record (a “black mark”) in ERA, while others do not, for the same type of issues.

Currently, the participating ministries independently develop annual business plans and priorities to determine enforcement activities for the coming year. With largely separate enforcement activities carried out by MOF and MELP, there is significant potential for certain areas of specialized enforcement to “fall through the cracks” (e.g., fish and wildlife habitat, water resources). By co-ordinating these plans and incorporating risk management planning into this annual procedure, ministries could expand their planning attention to higher-order objectives and assessable results as a framework for shared compliance and enforcement goals, targets and priorities within and across ministries.

Conclusions:

Specific objectives for compliance and enforcement have not been fully developed, and government managers are uncertain of how enforcement performance should be assessed.

Current risk management and business planning processes do not generally incorporate all activities under the Code, and some areas receive insufficient attention when it comes to enforcement.

The participating ministries are not consistently co-ordinating their business and risk management planning processes for Code enforcement. As a result there is significant potential for gaps in enforcement to occur.

Organization

The audit assessed the appropriateness of organizational structures and associated roles, as a foundation for Code enforcement activities, within and between ministries.

Inter-ministry Considerations

With the implementation of the Code in 1995, a provincial Memorandum of Understanding (MOU) was developed to co-ordinate roles and responsibilities between the three ministries delivering Code enforcement.

The provincial MOU addressed organizational issues, such as the ministries’ differing mandates and regional boundaries, by defining roles and reporting relationships. Regional MOUs were established that closely paralleled the provincial MOU.

However, this collaborative process is not performing in the manner described in the MOU or in such public documents as *Effective Enforcement of the Forest Practices Code* (November, 1995), which was published jointly by the three ministries. In reality, individual ministry mandates and cultures continue to prevail.

"...the MOU is not being used at all."

Interviewee

Although, in most districts, operational plan referrals are generally carried out consistently, other co-management activities anticipated in the provincial MOU—joint inspections, joint meetings, shared information systems, remediation efforts, common policies and procedures, joint enforcement strategies, field referrals, formal communication of contraventions, lead agency designations—have not been conducted in a consistent manner. Inter-ministry co-operation in the field has occurred sporadically through the goodwill of individuals, rather than through protocols of the MOU or as a result of direction from the executive of the three ministries.

The Forest Appeals Commission⁵ decision on the Whitesale Forest Service Road—February 28, 1997, noted this uneven inter-ministry participation and stated:

The Commission recommends that the two ministries make better efforts to educate their employees in the field on the contents of the MOU. Co-operation and communication between ministries are essential, as are required under the MOU, but appear to be absent in this case.

This audit confirms that generally this shortcoming still exists.

The primary effect of these co-operation and communication shortfalls is that MELP's participation in Code enforcement is significantly less than anticipated in the MOU. Some MELP officials complained that they are treated as external third parties, rather than partners, in overall administration of the Code. The ministry's dissatisfaction with its level of authority under the Code, and with the continuous decline in resources for staffing and associated administration and travel, has significantly detracted from carrying out all activities anticipated under the MOU.

MELP has chosen to restrict its Code participation to providing input into operational planning, generally through the review of forest development plans and silviculture prescriptions by forest ecosystem specialists. More recently, in some areas the ministry is reducing its review of forest development plans and is beginning to focus on field monitoring. This is due in a large part to, in the words of one senior MELP official "... the district manager won't pay attention to MELP comments, so MELP felt they had to try something else."

⁵ The Forest Appeals Commission is an independent tribunal established under the *Forest Practices Code of British Columbia Act*. The Commission hears appeals arising from decisions made under the *Code*.

MEM is not directly involved in Code enforcement, but does enforce equivalent provisions through application of the MX Code for its enforcement activity on mineral claims or tenures. Although obvious Code contraventions that occur on access roads leading to claims or tenures are generally referred to MOF or MELP, overall enforcement responsibility for these access roads has not been clearly defined.

The Oil and Gas Commission (OGC) is also not involved in Code enforcement, although the commission does have statutory authority to approve logging plans for seismic lines and access roads for well drilling. In these approvals, there is a process in place for plan referral to MOF to deal with Code enforcement issues. However, for work outside the Peace River area in northeastern BC, it is not clear whether forest districts are aware of the OGC activity.

Co-ordinated inter-ministry action has not been implemented with the priority or consistency implied in both the MOU and in public statements. Both MELP and MOF officials agree that revisions to the 1995 MOU are required. However, a joint ministry review of the MOU has been deferred pending MELP's review of organizational approaches for delivery of its Code C&E program.

Notwithstanding under-utilization of the MOU, the ministries—MOF, MELP, MEM—the Oil and Gas Commission, and the Ministry of the Attorney General—do consult regularly through a number of Code-focused policy and operational standing committees. These include a joint steering committee, a joint management committee, and a joint compliance and enforcement committee. However, this level of corporate co-operation is not necessarily reflected at the field level.

Conclusions:

The expected roles of the ministries and their officials, and coordination between them, for Code enforcement has not occurred as intended by the MOU.

MELP's limited role in Code enforcement may have a negative impact on government's administration of the Code, especially as it relates to those areas not traditionally within the MOF mandate or expertise (e.g., fish, wildlife, and water). MELP's reluctance to participate decisively in Code enforcement, notwithstanding funding and staffing constraints, appears contrary to the spirit and intent of the Code.

MEM and OGC have been effectively removed from Code enforcement through legislative change. However, there remains an issue with respect to responsibility for enforcement of Code requirements related to access roads to mineral claims or tenures and oil and gas exploration.

Even though the current MOU has not been fully applied by the ministries and is out-of-date, an MOU can be an effective instrument for managing cross-ministry coordination.

Ministry Compliance and Enforcement Organization

With the inception of the Code, MOF and MELP made organizational adjustments, including the creation of a C&E program within MOF. Both ministries incorporate such functions as planning, inspections, investigations and prosecutions.

Within MOF, the July 1997 Task Team Report examined and recommended approaches to implementing compliance and enforcement. The primary thrust of the report was to create an independent C&E program within each regional and district office. In general, the offices have implemented this recommendation. However, two primary models have evolved—the “pre-post” model, which separates roles of staff responsible for planning from those responsible for compliance and enforcement, and the “zonal” model, which combines both roles.

Corporately, MOF created a Compliance and Enforcement Branch as a staff resource for regions and districts in their delivery of enforcement activities. Branch services include policy development, training, surveys, hands-on support for reviews and appeals, and a standing advisory resource.

MELP has addressed its organizational issues through the Wildstone study⁶, which reported in 1999 on objectives, roles, and structures of the C&E function. This report has led to internal examination of alternative approaches and models for service delivery, which are still under consideration.

MELP has a long-standing conservation officer service that has assumed the ministry's lead in enforcement of the statutes under its mandate, primarily through an investigative and enforcement-focused approach. This investigative expertise is available to MOF C&E staff on request. In addition, a forest ecosystem specialist was assigned to each MOF district office to deliver MELP's operational planning responsibilities under the MOU. Apart from the largely investigative performance of conservation officers, and with cutbacks to habitat protection officers, the ministry has a limited and uneven inspection capability and presence across its regions. The Resource Stewardship Branch provides corporate support to the C&E function in MELP.

Currently, rather than collaborating and seeking ways to work together, the ministries appear to be operating in isolation. The result is a tendency toward parallel ministry C&E organizations that, in the aggregate, have the potential to become duplicative and ultimately a less effective use of scarce resources.

Conclusions:

A variety of organizational structures for compliance and enforcement exist in both MOF and MELP. This mix of models can create inconsistencies, and the potential for unnecessary duplication between ministries in the overall administration of Code enforcement.

Funding limitations seriously constrain the ability of MELP to perform its enforcement duties, particularly in the area of inspections.

The Conservation Officer Service has a specialized environmental enforcement capability, which is currently under-utilized in Code enforcement.

Conflicting Responsibilities Within the Ministry of Forests

MOF district managers have been given significant statutory authority for Code planning, administration and enforcement processes. In order to maintain objectivity and to avoid conflicts of interest in the statutory decision-making process, they generally delegate authority and responsibility

⁶ Forest Practices Code Compliance and Enforcement Strategy, Ministry of Environment Lands and Parks, Resource Stewardship Branch, January 15, 1999. Prepared by Wildstone Resources Ltd.

for managing the C&E program to other district staff, usually an operations manager.

However, this has not fully alleviated the perception of conflict by third parties. Some industry representatives interviewed felt that, despite such separations, district managers have a conflict of interest in that they must rule against district staff if they are to find in favor of industry during an opportunity to be heard or determination process. Others perceive a conflict between the district manager's responsibility for fibre flow and Code enforcement. It is important to note that these perceptions stem from conflicting priorities, and cannot easily be avoided. There exist many similar situations in which public sector managers must manage between competing objectives.

Nevertheless, there exists an inherent condition of conflict over Small Business Forest Enterprise Program (SBFEP) activities in that district managers are responsible for assessing and judging the performance of a program that they are also responsible for delivering. This view has been confirmed by a number of interviewees, including a MOF senior manager who indicated that the conflict is "not really perceived, but actual."

Certain measures have been applied to separate the district manager from day-to-day enforcement of the SBFEP, such as a review of SBFEP performance by regional staff and ensuring the same C&E staff that review licensee activities also review SBFEP activities.

However, these measures have not been applied in a consistent manner and do not adequately address the issue of district manager objectivity and independence in the enforcement of the SBFEP.

Conclusion:

To the extent possible within a single entity, the statutory responsibilities of MOF district managers have been separated from potentially conflicting operational responsibilities, despite perceptions. However, there is an inherent condition of conflict in the administration of the SBFEP in that district managers are responsible for assessing and judging the performance of a program that they are also responsible for delivering. Certain measures have been applied to mitigate the conflict but they have not been consistently applied and do not adequately address the issue of district manager objectivity and independence in the enforcement of the SBFEP.

Training

The audit assessed the extent to which enforcement training is available to employees to ensure they have the necessary knowledge and skills to support the achievement of Code enforcement objectives.

The implementation of an enforcement role in MOF has led to significant adjustments to the roles of field staff. Initially, MOF officials taking on statutory roles did not have experience with Code procedures. Compliance and enforcement training has been developed and implemented as an ongoing priority. Staff comfort with this new role varies but, over time, recruitment and training are addressing this issue.

In some regions and districts, enforcement specialists have been assigned to handle investigations and prosecutions, which has allowed other field staff to focus more on promoting compliance with the Code.

The MOF Task Team Report identified minimum training requirements for all staff involved in the C&E program and a training program has been implemented. Although not all staff have received the required minimum training, and most locations indicated that more advanced law training is desirable, MOF C&E staff generally feel that there is sufficient training available.

MELP is reviewing its C&E organization and staffing requirements. While the ministry's conservation officer program has a longstanding enforcement training program, it does not include specific Code enforcement training. However, MELP staff can access Code training offered by MOF.

MEM inspectors also have access to MOF training programs, however, since the introduction of the MX Code, few MEM staff have received Forest Practices Code enforcement training.

Ongoing legislative changes over the past few years have led to some confusion in the field, particularly around the expected roles of the ministries' enforcement officials. There is a need both to stabilize program delivery and to fully determine the operational implications of Code changes. When changes are implemented, it is important that transitional measures, including role re-definitions and training, be provided for field staff of the participating ministries.

Conclusions:

In general, MOF employees involved with Code enforcement have the training available to them to support the achievement of Code objectives. MELP and MEM enforcement employees work primarily with legislation other than the Code, therefore, they generally do not participate in Code training.

Government has not fully identified the operational implications of Code changes. Some employees have felt overwhelmed by the pace of change in legislation, policy interpretations and shifting priorities.

Management Direction and Control

The audit assessed the management framework of the participating ministries and implications for appropriate enforcement of the Code, including:

- establishment of policy and procedures;
- management controls in place to prevent, detect, and correct inappropriate enforcement of the Code;
- monitoring of performance against predetermined measurable targets and indicators; and
- periodic assessment of the effectiveness of organizational structures, processes, and controls.

Policies and Procedures

The audit examined whether or not the ministries have sufficient, co-ordinated and timely policies and procedures to support staff that enforce the Code.

Although the Code provides numerous avenues for the Lieutenant-Governor in Council, the ministers and the chief forester to formally establish policies, procedures, plans and standards, policy development has generally been delegated to the operations divisions of the participating ministries.

The MOF Compliance and Enforcement Branch has provided effective support and leadership in developing policy. However, since policy is treated as advice—rather than direction—it is not clear whether it is adopted and applied in a fair and consistent manner in regions and districts. The result is that some regions and districts have developed their own procedures, creating an assortment of policies and procedures across the province. This divergence appears to result from executive managers being reluctant to “fetter” the performance of statutory decision-makers. A number of senior MOF regional and district staff noted this reluctance to fetter district

managers, stating that fettering has been interpreted too broadly, resulting in insufficient guidance being provided.

Conclusion:

Although the Compliance and Enforcement Branch of MOF has prepared and presented high quality policy, actual adoption and implementation has not occurred in a consistent or uniform manner.

Performance Measurement

As stated earlier, the ministries have not designed a framework for measuring performance of their C&E programs. In the absence of specific objectives for the programs, no meaningful data is available to assess the effectiveness of Code enforcement. Although business planning processes are applied, goals for compliance and enforcement are generally limited to a target number of inspections. Some district staff felt that more information on effective risk management and workload analysis could assist in measuring performance.

Conclusion:

Measurable targets and performance indicators for Code compliance and enforcement have not been adopted. As a result, there is no meaningful data with which to assess the effectiveness of ministries' enforcement performance.

Quality Assurance

Although organizational roles for quality assurance have been identified in MOF, these have not been uniformly implemented. Monitoring processes are not in place in all regions, although some have implemented a quality assurance program with a focus on monitoring districts, as recommended by the 1997 Task Team Report.

Most district managers indicated a desire for information on the consistency of their C&E program with other districts' programs. Some industry representatives indicated that inconsistent treatment between districts and, in some cases between zones or technicians within a district, is a concern.

Ministry C&E support branches—exercising primarily a support analysis, development and advisory role—have limited direct involvement in the quality assurance process. Although an audit role has been identified for MOF's Compliance and Enforcement Branch, this has been restricted to a

"...I would like to see more consistency, but it is difficult."

Senior MOF Official

survey⁷ and review function, describing ministry organization and activity rather than assessing the actual effectiveness and consistency of enforcement activity.

By default, the only real feedback on the effectiveness of government's enforcement is external reactions to determinations made under the Code, which can be observed through administrative reviews and appeals.

Conclusion:

In general, the audit found that a quality assurance framework for enforcement under the Code has not been fully developed or implemented by the participating ministries. Although credible work of high quality has been undertaken by MOF, some key elements of the framework—specifically the regional monitoring and branch audits—have not been sufficiently developed and implemented.

Executive Leadership

A significant element in ensuring an effective framework for enforcement of the Code is appropriate executive leadership, involvement and direction. The executive function includes the roles of assistant deputy minister-level officials, deputy ministers, ministers and the provincial Cabinet. The development and implementation of an enforcement framework—including such areas as legislative review; business planning; adoption and application of policies and procedures; quality assurance; performance measures; resource allocation; and ongoing strategic direction—rests with and extends from these government offices and bodies.

The audit examined the processes applied by those executive managers directly responsible for Code enforcement in each of the participating ministries.

Unified and consistent executive leadership and strategic direction for C&E programs is not evident within and between the ministries. Although executive managers in MOF and MELP have adopted some Code policies and programs, they have assumed an “arms-length” approach to field implementation.

In particular, in MOF the statutory authority of the district manager is not consistent with the traditional chain of command. Giving a virtual “judicial” status to that office appears to have reduced the ministry executive’s ability to manage the C&E program.

“...compliance and enforcement hasn't been a priority for the joint steering committee.”

Member of the Joint Steering Committee

⁷ The results of the internal MOF survey conducted by Compliance and Enforcement Branch were released on September 24, 1999 in a document titled “1999 Compliance and Enforcement Review Report With Recommendations.”

In addition, an important principle of administrative law is that officials who are given statutory authority shall not be fettered or constrained by policy or direction in reference to a specific decision. However, fettering of statutory decision-making has been broadly interpreted to encompass activities not directly related to the statutory decision itself.

"...have to allow the district manager to manage and hope they stay within suggested models."

Senior MOF Official

Conclusion:

Unified and consistent executive leadership and strategic direction for field delivery of Code enforcement is not evident within and between the participating ministries. The "arms-length" approach to enforcement implementation creates a risk that it will be applied unfairly, inconsistently and divergent from government's expectations.

Glossary

Administrative penalty

A penalty levied by any of three ministries — Forests; Environment, Lands and Parks; or Energy and Mines — against a company or person who has contravened the Forest Practices Code.

Administrative review

Reconsideration and review of certain types of determinations, in response to a request from the person affected or the Forest Practices Board. A review is conducted by civil servants that were not involved in the original determination. A review can lead to confirmation, cancellation or variation of the determination; to a new determination; or to the case being sent back to the original decision-maker.

Appeal

Application to a higher tribunal for reconsideration and change of a decision. Under the Code, review decisions can be appealed to the Forest Appeals Commission, and Commission decisions can, in certain circumstances, be appealed to British Columbia Supreme Court.

Business planning

Applies long range strategic directions of an organization as the basis for the development of shorter-term (generally annual), work planning, budgeting and resource allocation.

Contravention

A violation of a provision of the Code.

Determination

A decision, act, omission, procedure, levy, order, or other determination made or taken by an official under authority of the Code.

Fettering

Government policies are not allowed to “fetter” decision-makers in such a way as to interfere with their ability to make independent decisions based on the criteria established by law. Fettering occurs when policy or direction sets such tight constraints on the decision-maker that the independent decision-making intended by the statute is not carried out.

Forest development plan

A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of usually five years. Methods, schedules, and responsibilities for accessing, harvesting, renewing, and protecting the resource are set out to enable site-specific operations to proceed.

The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It should also describe how objectives and strategies established in higher level plans,

where they have been prepared, would be carried out. Site specific plans are required to be consistent with the forest development plan.

Higher level plan

A landscape level management objective legally established by government as a higher level plan under the Code. Forest resource objectives in higher level plans guide the objectives and management strategies in operational plans such as forest development plans.

Judicial penalties

Penalties imposed by a court of law.

Logging plan

A logging plan is an operational plan that details how, when, and where timber harvesting and road construction activities will take place in a cutblock, in accordance with the approved silviculture prescription and forest development plan for the area. The requirement to prepare logging plans was repealed on June 15, 1998, but may be in effect in limited circumstances. Logging plans approved before June 15, 1998, continue to be in effect until timber harvesting is completed.

Management direction and control

Where management asserts its authority to ensure those elements of an organization (including its resources, systems, processes, culture, structures and tasks) support people in the achievement of the organization's objectives.

Memorandum of understanding (MOU)

An agreement between ministers defining the roles and responsibilities of each ministry in relation to the other or others, with respect to matters over which the ministers have concurrent jurisdiction.

Mineral claims and tenures

A legal title to the minerals on or under a specified area of land.

Official

Under the Code, an official means a designated forest, environment or energy and mines official.

Opportunity to be heard

An opportunity for a holder of a licence to review evidence and present its position to a statutory decision-maker with respect to a supposed contravention, before a decision on the contravention is made.

Organizational structures

How a group of people working in pursuit of objectives is organized.

Participating ministries

The Ministry of Environment, Lands and Parks (MELP), Ministry of Forests (MOF) and Ministry of Energy and Mines (MEM).

Performance Measurement Framework

A framework by which objectives of a program are identified, targets are declared, and specific processes are applied to monitor and measure attainment of these objectives and targets.

Policies

General statements of principles that guide government administration in the management of public affairs. They normally do not have the force of law. Policies include statements on how a government authority is to achieve its goals and objectives with regard to a specific subject area or class of subject areas, e.g., a policy for the process and recording of determinations.

Quality assurance framework

A framework for a program that ensures efficient and effective processes are utilized to ensure that the program is in compliance with statutory requirements. These processes could include inspections, monitoring and audits.

Referral

Process by which applications for permits, licences, etc., made to one government agency by an individual or industry, are given to another agency for review and comment.

Risk assessment

The estimation of the likelihood of loss or damage and the magnitude of the consequence should the loss or damage occur. In forestry, risk assessment includes the process of identifying the degree of risk that timber harvesting and road building imposes on adjacent and downslope social, economic, and forest resource values. The severity of each potential hazard and the magnitude of the potential consequences that correspond to each hazard provide the overall risk associated with harvesting a site.

Risk management

The “art” of weighing the assessed risks (i.e., the likelihood of a potential loss to an environmental, social or economic value) against the expected benefits that may be gained from that action or decision.

Small Business Forest Enterprise Program (SBFEP)

This MoF program awards timber sale licenses to small business licensees. The Ministry of Forests, through the district manager, and the individual licensees each have separate but inter-related roles and responsibilities within the program.

Senior official

Under the Code, a senior official means:

- a district manager or regional manager,
- a person employed in a senior position in the Ministry of Forest, Ministry of Environment, Lands, and Parks or the Ministry of Energy, Mines and Petroleum Resources, who is designated by name or title to be a senior official for the purposes the Act by the minister of that ministry.

Silviculture prescription

A silviculture prescription is a site-specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). Silviculture prescriptions are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free growing stand capable of meeting stated management objectives.

Statute

A formal written enactment of a legislative body, e.g., the provincial legislature or federal Parliament.

Statutory decision-maker

An official who is designated to make decisions under the Code.