



Reference: 274802

June 23, 2023

VIA EMAIL: [FPBoard@bcfpb.ca](mailto:FPBoard@bcfpb.ca)

Keith Atkinson, Chair  
BC Forest Practices Board  
Box 9905 Stn. Prov. Govt.  
Victoria, British Columbia  
V8W 9R1

Dear Keith Atkinson:

Thank you for the December 2022 *Wildfire Act Determinations Special Investigation Report* that evaluated whether determinations enforcing the *Wildfire Act* are consistent, fair, and timely. The levying of administrative penalties and issuing of orders to recover fire control costs and damage to provincial Crown resources are part of the range of options essential to the enforcement of the legislation and the prevention of human-caused wildfires. The Ministry of Forests' expectations is that application and enforcement of the *Wildfire Act* and *Wildfire Regulation* will prevent unwanted fire starts to limit the health, safety, environmental and economic impacts to British Columbians.

In accordance with section 132 of the *Forest and Range Practices Act*, the BC Wildfire Service and the Compliance and Enforcement Branch are providing the following responses to the recommendations made by the Board.

**1. The Ministry of Forests fairly and consistently value merchantable and non-merchantable timber damaged or destroyed by wildfire.**

Compliance and Enforcement Branch within the Ministry of Forests is currently using a fulsome and court tested methodology for the fair and consistent valuation of merchantable timber. The Forest Practices Board report acknowledged that "...by 2018 CEB had developed a detailed procedure to assess damages, which was applied to wildfires post-2018" and that the procedure "...clearly outlines how and who should be involved in damage assessments..."

Compliance and Enforcement Branch, in conjunction with timber pricing and revenue staff have developed and implemented a methodology to assess wildfire damages for non-merchantable and immature timber that have no other legislatively prescribed valuation. This methodology is currently being used in several investigations and as it is tested in legal

proceedings, it will be evaluated and modified to ensure it fairly and consistently captures wildfire damage to immature timber.

Compliance and Enforcement Branch has a permanent full time Wildfire Damage Specialist to ensure professional and provincially consistent damage assessments are included in all wildfire cases that are being pursued to administrative hearings or prosecution.

**2. Government provide decision-makers with the discretion to order a liable person to pay none, some, or all of the government’s fire control costs and damage to government resources and property.**

Sections 25 and 27 of the *Wildfire Act* describe that the minister may require a person to pay to the government its costs of carrying out fire control, or the fire control costs that resulted directly or indirectly from a contravention, respectively. Those sections also describe that the minister may require a person to pay to the government the value of Crown resources and property that were damaged or destroyed as a direct or indirect result of a fire, or a direct or indirect result of a contravention. The *Wildfire Regulation* sets out the prescribed manner for calculating the government fire control costs and the value of the Crown resources damaged or destroyed. With the exception of section 29 of the *Wildfire Regulation*, there are no provisions in either the *Act* or the *Regulation* that describe how or under what conditions the minister may reduce or eliminate either the government fire control costs or the value of the Crown resources damaged or destroyed when those are calculated in the prescribed manner. There are also no provisions that describe how or under what conditions the minister may apportion costs or damages where more than one party is involved.

The process to reduce or eliminate either the fire control costs, or the value of damaged resources could, as one example, require a decision maker to compare the relative gravity of a contravention in one case to the contraventions in other cases, on some sort of sliding scale involving “degrees of seriousness” of a contravention. Another approach could be for a decision maker to assess the “importance” of the resources that were damaged and compare that to the “importance” of the resources that were damaged in other cases. Either of these approaches could require a decision maker to consider, in theory, every other case in which a cost recovery or contravention order had been made up to that point, to determine where the case before them fits in the spectrum of cases. In either approach, only the most egregious of contraventions, or the damage of the most “important” resources might warrant a decision maker to order the full amount of fire control costs or the full value of the damaged resources.

The BC Wildfire Service will consider the information presented by the Board in the *Special Investigation Report* and will analyze whether discretion should be provided to decision makers to reduce or remove from a cost recovery order the government’s fire control costs and / or the value of Crown resources damaged or destroyed. The BC Wildfire Service will also analyze whether discretion should be provided to decision makers to apportion costs or damages between multiple parties. If appropriate, the government may consider legislative amendments after completing that analysis.

**3. Government amend the *Wildfire Act* to make the statutory defences to a contravention described in section 29 of the *Wildfire Act* available to persons who are subject to allegations made under section 25 of the *Wildfire Act* for causing or contributing to the start or spread of wildfire.**

Section 25 of the *Wildfire Act* is a cost recovery scheme that does not impose administrative penalties to penalize behaviour and deter non-compliance. It describes only the potential recovery of government fire control costs and the value of Crown resources and property damaged or destroyed. A person subject to an allegation under section 25 is able to control the activities on their property. They can control whether any fires are ignited on their property and the timing of ignition of those fires, the type and timing of activities that may cause a wildfire on their property, the fuel breaks on their property, and the fire suppression equipment they keep on site. The use of fire and the activities that may cause a wildfire are inherently dangerous activities and, presumably, provide a benefit to the property owner. A person who can control the use of fire on their property and the activities that may cause a wildfire on their property should also be responsible for the consequences or outcomes of those actions and activities on their property.

In consideration of the information presented by the Board, the BC Wildfire Service will assess and analyze whether the defences described in section 29 of the *Wildfire Act* should be made available to a person alleged to have caused or contributed to the start or spread of a fire under section 25 of the *Act*. If appropriate, the government may consider amendments to the wildfire legislation after that analysis is complete.

**4. Government amend the *Wildfire Regulation* to make fire hazard abatement a circumstance for not seeking cost recovery.**

The use of fire is one tool available to a person to abate a hazard that results from carrying out an industrial activity – often the least expensive alternative. On December 5, 2022, the BC Supreme Court released a decision relevant to whether debris pile burning is a circumstance for not seeking fire control cost recovery under section 29 of the *Wildfire Regulation*. In that decision, the court indicated that those who use open fires can be held responsible for fire control costs, if, by their act or omission, the fire gets out of control, and that ignited debris piles that become a wildfire do not meet the intent of a circumstance for not seeking cost recovery.

The prevention of human-caused fires is a key premise of the *Wildfire Act* and *Wildfire Regulation*. The government recently amended the *Wildfire Regulation* to provide clarity regarding the circumstances in which the minister may not order the recovery of government fire control costs. These amendments included a provision that the lighting, fuelling or use of open fires is excluded as a reason for not ordering fire control costs. Hazard abatement may be completed in a number of ways and those who choose to complete this activity by burning must do so with the prevention of human-caused fires as their primary objective.

Sincerely,



---

Rob Schweitzer  
Executive Director  
BC Wildfire Service



---

Ted White  
A/Executive Director  
Compliance, Enforcement & Archaeology

pc: Brad Faucett, Director, Compliance and Enforcement Branch  
David Fleming, Director, Corporate Governance, BC Wildfire Service  
Ian Brown, Deputy Director, Operations, Compliance and Enforcement Branch  
Kathleen Werstiuk, Manager, Wildfire Risk, BC Wildfire Service

October 25, 2023

File: 97325-20/2020-30

**VIA EMAIL**

Rob Schweitzer  
Executive Director  
BC Wildfire Service  
Box 9502, Stn Prov Govt  
Victoria, BC V8W 9C1  
[Rob.Schweitzer@gov.bc.ca](mailto:Rob.Schweitzer@gov.bc.ca)

Ted White  
Acting Executive Director  
Compliance, Enforcement & Archaeology  
Box 9375, Stn Prov Govt  
Victoria, BC V8W 9C1  
[Ted.White@gov.bc.ca](mailto:Ted.White@gov.bc.ca)

Dear Rob Schweitzer and Ted White:

**Re: Government's Response to *Wildfire Act Determinations* Special Investigation**

Thank you for your June 23, 2023, letter responding to the Forest Practices Board's special investigation on *Wildfire Act Determinations* (the report). The Board has reviewed your reply and offers the following comments.

*Recommendation #1 The Ministry of Forests fairly and consistently value merchantable and non-merchantable timber damaged or destroyed by wildfire.*

Thank you for confirming that government is implementing a process overseen by the Wildfire Damage Specialist to fairly and consistently value merchantable and non-merchantable timber damaged or destroyed by wildfire. We look forward to seeing this process applied throughout the determination process.

*Recommendation #2 Government provides decision-makers with the discretion to order a liable person to pay none, some, or all of the government's fire control costs and damage to government resources and property.*

The Board acknowledges that giving a decision-maker discretion, such as apportioning liability, can complicate determinations. We agree that one potential unintended consequence might be that only the most serious contraventions or significant damages warrant full cost recovery or compensation. As the report outlines, BC has experience carefully considering and transparently designing discretionary powers for apportioning liability to ensure a fair and consistent outcome. *Wildfire Act* determinations can involve

Rob Schweitzer  
Ted White  
October 25, 2023  
Page 2

complex circumstances, multiple parties and varying culpabilities. This complexity underscores the necessity of the discretionary powers outlined in our recommendation.

Your response indicates that government is still assessing and analyzing the Board's recommendation. This implies that government has not decided whether the recommendation will be followed. The Board asks that government please confirm what steps have been taken or are proposed to be taken to give effect to the recommendation or the reasons for not accepting the recommendation. In accordance with section 132 of the *Forest and Range Practices Act (FRPA)*, the Board requests the Ministry of Forests reply by December 31, 2023.

*Recommendation #3: Government amend the Wildfire Act to make the statutory defences to a contravention described in section 29 of the Wildfire Act available to persons subject to allegations made under section 25 of the Wildfire Act for causing or contributing to the start or spread of wildfire.*

The Board appreciates that section 25 of the Act is used to recover fire control costs and the value of Crown resources and property damaged or destroyed. The Board understands that a key contrast between monetary orders issued under section 25 and section 27 is that administrative penalties cannot be levied for those liable under section 25. This contrast, however, does not justify or further explain why statutory defences are not available to those alleged to be liable under section 25.

The Board agrees with the premise that those facing liability under section 25 had control over their activities, including starting fires. These actions are risky but benefit the person; therefore, they should be accountable for the outcomes. These reasons for cost recovery are equally applicable to persons who may have contravened the Act under section 27, except the person who contravenes has an advantage in that they can avoid paying fire control costs, damages or other monetary orders if they establish a valid statutory defence.

Your response indicates that government is still assessing and analyzing the Board's recommendation. The Board asks that government confirm what steps have been taken or are proposed to be taken to give effect to the recommendation or the reasons for not accepting the recommendation. In accordance with section 132 of FRPA, the Board requests the Ministry of Forests reply by December 31, 2023.

*Recommendation #4 Government amend the Wildfire Regulation to make fire hazard abatement a circumstance for not seeking cost recovery.*

The Board understands that the recent amendments in the *Wildfire Regulation* include a provision that the lighting, fueling or use of open fires is excluded as a reason for not ordering fire control costs. Nevertheless, the Board is disappointed that government does

Rob Schweitzer  
Ted White  
October 25, 2023  
Page 3

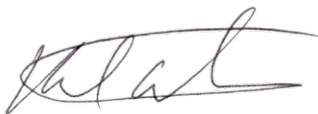
not accept our recommendation to amend the regulation to incentivize licensees to abate hazards responsibly.

While there are many strategies to abate a fire hazard, it's important to recognize that some of the lowest-risk approaches, such as biomass utilization, are often not practical. Pile burning, however, is a common method to meet the requirements of the *Wildfire Regulation*. Recent amendments to the regulation further conflate this common practice with liability.

Government can provide leadership by encouraging or incentivizing diligent abatement practices. The proactive promotion of responsible abatement will serve to advance professional practice, introduce measures of accountability and prevent the need for costly resolution from the Forest Appeals Commission and the courts.

We look forward to receiving your response to recommendations 2 and 3 by December 31, 2023.

Sincerely,



Keith Atkinson, RPF  
Chair

cc: Richard Manwaring  
Deputy Minister  
Ministry of Forests  
[Rick.G.Manwaring@gov.bc.ca](mailto:Rick.G.Manwaring@gov.bc.ca)

Shane Berg  
Assistant Deputy Minister, Chief Forester  
Office of the Chief Forester, Ministry of Forests  
[Shane.Berg@gov.bc.ca](mailto:Shane.Berg@gov.bc.ca)

Brad Faucett  
Director, Compliance and Enforcement Branch  
Ministry of Forests  
[D.Brad.Faucett@gov.bc.ca](mailto:D.Brad.Faucett@gov.bc.ca)

Ian Meier  
Assistant Deputy Minister  
BC Wildfire Service  
[Ian.Meier@gov.bc.ca](mailto:Ian.Meier@gov.bc.ca)



Reference: 274802

December 22, 2023

VIA EMAIL: [FPBoard@bcfpb.ca](mailto:FPBoard@bcfpb.ca)

Keith Atkinson, Chair  
BC Forest Practices Board  
Box 9905 Stn. Prov. Govt.  
Victoria, British Columbia  
V8W 9R1

Dear Keith Atkinson:

Thank you for the October 25, 2023, letter responding the Ministry's reply to the *Wildfire Act Determinations Special Investigation Report* that evaluated whether determinations enforcing the *Wildfire Act* are consistent, fair, and timely. The BC Wildfire Service provides the following responses to the comments provided in that letter.

**Recommendation #2. Government provides decision-makers with the discretion to order a liable person to pay none, some, or all of the government's fire control costs and damage to government resources and property.**

It is the understanding of the BC Wildfire Service that a legislative amendment is required to provide decision-makers with the discretion to order a liable person to pay none, some, or all the government's fire control costs and damage to Crown resources.

As indicated in your October 25 letter, *Wildfire Act* determinations can involve complex circumstances, multiple parties, and varying culpabilities. This level of complexity further supports the adherence to a prescribed manner for calculating costs and damages, as currently described in the *Wildfire Regulation*, rather than requiring a decision maker to compare the relative gravity of a contravention in one case to the contraventions in other cases, on a scale of seriousness.

The BC Wildfire Service will continue to monitor whether discretion should be provided to decision-makers to reduce or remove government's fire control costs and the value of damaged or destroyed Crown resources from a cost recovery order but at this time, no legislative amendments related to this issue are being considered.



**Recommendation #3. Government amend the *Wildfire Act* to make the statutory defences to a contravention described in section 29 of the *Wildfire Act* available to persons who are subject to allegations made under section 25 of the *Wildfire Act* for causing or contributing to the start or spread of wildfire.**

The types of land where a cost recovery order under section 25 of the *Wildfire Act* may be made are not the same as the land types where an order may be made under section 27 of the *Act*. The BC Wildfire Service does not believe that the authority to control the activities on those different land types is entirely equal. A private landowner has greater control and authority over the activities on their private land than the authority granted to a tenure holder or a user of Crown land and should therefore have a greater responsibility for the consequences or outcomes of their actions on their private land.

As indicated in the recommendation, an amendment to the *Wildfire Act* would be required to give effect to the proposed change. At this time, no legislative amendments are being considered.

Sincerely,



Rob Schweitzer  
Acting Assistant Deputy Minister  
BC Wildfire Service

pc: Dave Fleming, Director, Corporate Governance, BC Wildfire Service  
Kathleen Werstiuk, Manager, Wildfire Risk



February 7, 2024

File: 97325-20/2020-30

**VIA EMAIL**

Rob Schweitzer  
A/ Assistant Deputy Minister  
BC Wildfire Service  
Box 9502, Stn Prov Govt  
Victoria, BC V8W 9C1  
[Rob.Schweitzer@gov.bc.ca](mailto:Rob.Schweitzer@gov.bc.ca)

Dear Rob Schweitzer:

**Re: Government's Response to *Wildfire Act Determinations* Special Investigation**

Thank you for your letter dated December 22, 2023, clarifying government's reasons for not accepting two of the Board's recommendations in our special investigation on *Wildfire Act Determinations*.

**Recommendation #2:** *Government provide decision-makers with the discretion to order a liable person to pay none, some, or all of the government's fire control costs and damage to government resources and property.*

The Board appreciates that the *Wildfire Regulation* provides a prescribed manner for calculating costs and damages. Your response, however, fails to address the Board's main issue: once those costs and damages are calculated, decision-makers lack the authority to reduce the monetary order or apportion liability fairly and consistently when multiple individuals are liable, each with varying degrees of fault. It is disappointing that the Ministry will not consider legislative amendments related to this issue.

**Recommendation #3:** *Government amend the Wildfire Act to make the statutory defences to a contravention described in section 29 of the Wildfire Act available to persons subject to allegations made under section 25 of the Wildfire Act for causing or contributing to the start or spread of wildfire.*

The Board found inconsistencies in the treatment of individuals alleged to have caused or contributed to the start or spread of a fire. If a person is a tenure holder, they can avoid paying

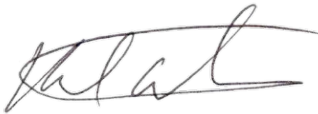
Rob Schweitzer  
BC Wildfire Service  
February 7, 2024  
Page 2

fire control costs, damages, or other monetary orders by presenting a valid statutory defence. In contrast, this legal defence is not available if the fire originates on private land. This approach unduly emphasizes the location of ignition, rather than focusing on the actions that caused or contributed to its start or spread, leading to unequal financial liability despite similar outcomes resulting from the fire.

The Board appreciates that persons on private land have more authority over the activities that occur on that land. However, the *Wildfire Act* emphasizes a universal obligation that applies equally to activities on both private and Crown land: to prevent human-caused wildfires. An amendment to the *Wildfire Act* could have aligned legal consequences with the nature of the conduct, regardless of where the fire originated.

While we are closing the file on this special investigation, we expect these issues to continue to arise until the Ministry takes necessary actions to ensure monetary orders can be more fairly apportioned and/or applied under the *Wildfire Act*.

Sincerely,



Keith Atkinson, RPF  
Board Chair

cc: Richard Manwaring  
Deputy Minister, Ministry of Forests  
[FOR.DMO@gov.bc.ca](mailto:FOR.DMO@gov.bc.ca)

Shane Berg  
Assistant Deputy Minister and Chief Forester  
Office of the Chief Forester, Ministry of Forests  
[Shane.Berg@gov.bc.ca](mailto:Shane.Berg@gov.bc.ca)

Ian Meier  
Assistant Deputy Minister, BC Wildfire Service  
[Ian.Meier@gov.bc.ca](mailto:Ian.Meier@gov.bc.ca)

Brad Faucett  
Director, Compliance and Enforcement Branch, Ministry of Forests  
[D.Brad.Faucett@gov.bc.ca](mailto:D.Brad.Faucett@gov.bc.ca)