

Appropriateness of a Stop Work Order for a Woodlot near Midway, BC

**Complaint 000236
FPB/IRC/36
October 2000**

The Investigation

This complaint is about a stop work order that was issued by the Ministry of Forests to the complainant for a woodlot licence in the Boundary Forest District. The complainant believes that the stop work order was not fair, judicious or appropriate.

The Board investigated whether it was appropriate for the Ministry of Forests to issue the stop work order.

Background

The complainant is a professional forester in good standing, a former woodlot extension forester and former president of the local woodlot association. The complainant manages the forest on his own private land and 600 hectares of Crown land under a woodlot licence near Midway, BC. He has managed the woodlot for about 15 years. The complainant is proud of the woodlot and his forest practices, and he routinely conducts tours for students and interested individuals.

The complainant operated in the woodlot without incident for about 8 months in 1999 and 2000. In February 2000, the Ministry of Forests (the ministry) discovered that the complainant had built a short section of road in the woodlot without an approved road layout and design. On February 16, 2000, a ministry official called the complainant and told him that an approved road layout and design was required before the road could be built. Both parties agree that the conversation became heated and the complainant became upset. The official then issued a verbal stop work order that prohibited harvesting and hauling operations.

The next day, the complainant met with the acting district manager and ministry staff. At the meeting, the ministry issued a written stop work order for hauling only. The complainant was still permitted to harvest timber. The complainant worked with ministry staff on a road

layout and design, which the district manager approved on February 19, 2000. The stop work order was immediately lifted and the complainant was permitted to resume hauling.

In April 2000, the complainant filed a complaint with the Board. Board staff visited the woodlot in July 2000.

Investigation Findings

Section 123 of the *Forest Practices Code of BC Act* (the Act) states, in part, that if an official considers that a person is contravening the Act, the official may order that the contravention cease until the person obtains the necessary approvals.

While reviewing ministry files in preparation for an inspection of the woodlot, a ministry official discovered that the complainant had either built road, or was planning to build road in the woodlot.¹ The ministry official also noticed that the complainant had not obtained approval for a road layout and design, and he considered that the complainant might be in contravention of section 60 of the Act.² The ministry official issued a stop work order, in accordance with section 123 of the Act.

The complainant had built road without the required approval, and he agreed that the issuance of the stop work order was legal. However, he felt humiliated by the ministry's 'heavy-handed' manner. The complainant explained that two truckers and one logger lost work because his operations were shut down. The complainant believes that other enforcement options were available to the ministry.

The ministry has a range of enforcement tools available to correct problems. These tools include verbal and written warnings, administrative penalties, remediation orders, stop work orders and formal prosecutions. For example, an administrative penalty of not more than \$50,000 can be levied for failing to obtain approval for a road layout and design before constructing or modifying a road.³

The ministry official told Board staff that, before he discussed this matter with the complainant on February 16, 2000, he was prepared to allow the complainant to come into the office and obtain the required approval. However, the ministry official explained that he did not tell the complainant this because the telephone call quickly became heated and unproductive. The complainant was very upset and told the ministry official that he could not talk to him any longer. The ministry official then issued the stop work order.

¹ The complainant's stumpage appraisal package indicated that road building would occur.

² Section 60(1) In accordance with the regulations, a person who is the holder of a road permit, a cutting permit, a timber sale licence that does not provide for cutting permits or a special use permit, must obtain the district manager's approval for a road layout and design before constructing or modifying a road to which the permit applies.

³ Administrative Remedies Regulation – Schedule.

Had the telephone conversation not deteriorated, the matter would likely have been resolved the next day with the complainant visiting the ministry office and obtaining the required approval. The Board considers that a telephone call would be the normal and expected first step to achieving compliance with the Act. When the telephone call did not achieve the desired result, the ministry official chose to issue a verbal stop work order. The ministry official stated that he felt the best way to ensure that the complainant complied with the Act was to shut down his operations until the necessary approval was obtained.

It is unfortunate that this matter was not resolved during the telephone call. However, the Board considers that the public expects a licensee to obtain the required approvals before building road on Crown land, and that the ministry acted reasonably and appropriately when it issued the stop work order. The stop work order was a logical next step to ensure that the complainant complied with the Act.

Finding

The Ministry of Forests acted reasonably and appropriately when it issued the stop work order to the complainant.

Conclusion

The complaint about unreasonable government enforcement was not substantiated. The ministry's enforcement actions were effective in compelling the licensee to comply with the Act. Unfortunately, compliance was obtained at the expense of the relationship between the complainant and the ministry.