



Proposed Amendments to The Forest Resources Management Act

Saskatchewan Ministry of
Environment

November 2009



Saskatchewan
Ministry of
Environment

www.environment.gov.sk.ca

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Summary

The Ministry of Environment is proposing amendments to The Forest Resources Management Act that will enhance the legal framework for implementing a more results-focused way of managing provincial forest land.

Major amendments will:

- define the purpose of an audit and provide auditors with the authority necessary to conduct their work;
- enable the creation of an environmental code setting out required environmental outcomes;
- provide an option for lengthening the term of an operating plan when prepared by qualified persons;
- provide for the requirements of The Environmental Assessment Act to be satisfied by the preparation of a forest management plan pursuant to The Forest Resources Management Act;
- allow forest management agreements to be changed when the Minister and licence holder agree to change the agreement;
- require that a trustee be appointed for each forest management trust fund;
- authorize the Minister to suspend or cancel a harvesting licence, in whole or in part, where a mill has been closed for a year, a market exists for the wood and another party is prepared to use that opportunity;
- replace licensing requirements for commercially harvesting berries and mushrooms in the forest with a requirement to follow the environmental code;
- repeal licensing requirements for facilities processing wood;
- authorize the Minister to make public any information submitted as a requirement of the act, regulations or the code;
- broaden the application of administrative penalties to all persons for any breach of the act, regulations or the code; and
- authorize the Minister to direct persons to repair forest damage that they have caused in contravention of the act, regulations or the code.

The ministry has considered the recommendations from an independent legislative review and public consultations. It is now able to engage interested parties and stakeholders in more specific discussions on the proposed changes to The Forest Resources Management Act.

Introduction

The Ministry of Environment is committed to the successful implementation of a results-based regulatory regime to improve the way that Saskatchewan's environment and human health are protected and regulated. The core principles guiding implementation of this approach include: development of a results-focused environmental code composed of standards and other requirements that operators must achieve; legal authority to hold

operators and industry accountable for meeting the code; transparency in all processes and information used to obtain approvals; and a regulatory framework that provides competent people the flexibility to be innovative and to learn from experience.

Changes proposed to The Forest Resources Management Act (FRMA) are based on the ministry's mandate review in 2008 by Clifton Associates Ltd. and subsequent consultations in August 2008 and in May 2009. Those consulted strongly support pursuing the principles that collectively describe the move towards a more results-based approach to delivering the Ministry of Environment's mandate. They also want to continue to be engaged during the development of amendments and associated regulations and codes. The ministry has considered the comments received and now wants to engage interested parties in more specific discussions on the proposed changes to FRMA.

This document has three parts. The first provides some context for how the amendments will be used. The second summarizes key changes to FRMA. The third is an appendix providing more detailed information on the nature of the changes.

The Intent of the Amendments

A key ministry action will be the creation of a Saskatchewan Environmental Code that sets out required environmental outcomes for all sectors of the economy. There will be a shift in focus from administrative procedures to assessing and reporting on results specified in the code. Desired results will be described in a measurable way, focus on significant risks and be based on good science and public consultation. Where it makes sense, results will be standardized across industries.

A greater degree of responsibility will be provided to developers, licensees and persons who demonstrate that they want to be environmental stewards. The ministry will work with such people to identify who is competent to achieve the results set out in the code. Qualified persons will be provided more flexibility in how they achieve the required outcomes. This flexibility will include some acceptance of failure, if it is used to improve practices and a commitment to continual improvement has been demonstrated.

Performance against results will be measured and reported through audits. Audits will be conducted in accordance with international protocols well tested and accepted in the field of environmental management. Auditors, independent of the organization being audited, will base their findings on a comprehensive understanding of the desired results, a credible sample of actual outcomes, up-to-date knowledge of best practices and an analysis of the root causes of performance failures. They will also be skilled at working with the audited organization to develop action plans that will improve the organization's performance.

Developers entrusted with greater flexibility to achieve defined outcomes will account for their performance by providing information on the results achieved. Where failure is due to negligence, appropriate and effective compliance tools will be used.

Duty to Consult

The Ministry of Environment will maintain its commitment to consult with First Nations and rights-bearing Métis communities in advance of decisions or actions which may adversely impact Treaty and Aboriginal rights.

Major Changes Proposed to The Forest Resources Management Act

Audits

Audit has been defined and auditors have been given the powers necessary to conduct their work.

Consultations with forest companies highlighted the fact that most major forest companies have themselves independently audited against one or more recognized certification systems. They do this to provide customers greater assurance that they and their suppliers practice good forest management. The ministry will work with companies to explore how their audit information can be used to ensure that Saskatchewan's laws and policies are being followed. For this reason, the once-per-decade, government-led audit proposed in the last round of consultations will be replaced by more frequent results-based audits that take advantage of all available, independently-collected information.

The Saskatchewan Environmental Code

The amendments include enabling the use of an environmental code. The authority for the Minister to create four manuals of standards on planning, operations, scaling and compliance will be replaced by the authority of Cabinet to adopt codes governing any activity regulated by the FRMA. Standards developed by the Minister may be adopted by Cabinet as part of the code. All persons must comply with the code. Current requirements to adhere to the act and regulations will be broadened as appropriate to include the code. References to standards will be replaced with a reference to the code, of which standards will be a part.

The Minister will have the authority to create requirements that are an alternative to the code if the alternative provides an equal level of environmental protection. The Minister can set compulsory conditions for conducting alternatives to the code.

Planning requirements now set out in the act will be replaced with a general requirement to prepare and implement plans in accordance with the code. Provisions respecting consultation with Aboriginal and other people have been retained to highlight the commitment that planners must make to involve interested people. Planning standards now set out in the planning manual will become part of the code when adopted by Cabinet.

Longer Approval Periods for Operating Plans

A key feature of the results-based regulatory approach is to provide qualified persons with more responsibility and flexibility to achieve the results set out in the code. The Minister will have the option of approving operating plans for a period longer than one year if he or she is convinced that the plan is in accordance with the requirements and that the plan has been sanctioned by a person qualified to do forest planning. Who is qualified to do such work will be set out in the regulations and code after further consultation with the Association of Saskatchewan Forestry Professionals and other interested stakeholders.

An operating plan approved for a period greater than one year will be subject to all of the requirements that now apply to forest plans, including consultation requirements. Ministry audits and inspections will determine if plan results are being achieved and will set out corrective actions if results are less than satisfactory. A key focus of such audits will be to link the results of annual operations with the long-term objectives set out in forest management plans.

Should the Minister become aware that activities approved in an operating plan contravene the act, regulations or the code, the Minister may cancel, amend or suspend the operating plan, the forest product permit or the term supply licence. This authority provides an added level of assurance that forestry professionals will be held accountable for achieving the results set out in the code.

Environmental Assessment Requirements Met By Forest Management Plan

Currently, the information provided for approval of a forest management plan significantly overlaps that required for an environmental assessment. Amendments to the FRMA and The Environmental Assessment Act will deem approval of a forest management plan to also be approval of assessment requirements. Planning standards in the code will be changed to address assessment topics not explicitly described in current forest management planning requirements, thereby providing one approval process instead of two.

Key Terms of a Forest Management Agreement

Amending Agreement Terms

The act currently stipulates that the major terms of forest management agreements such as dues rates, harvest volumes and licence area can only be changed every ten years at the time an agreement is extended. The act will be amended to allow for changes at any time that the Minister and licence holder reach agreement.

Forest Management Funds

The act will be amended to require that funds set up for the deposit of forest management fees will be managed by a trustee who will be part of the fund agreement and will ensure that funds are used to fulfill the obligations that the licensee has to the province.

Mill Closures

The current provision allowing the Minister to suspend or cancel a licence, in whole or in part, has been broadened to include the circumstance where a mill has been closed for a year. This authority could be used when the Minister believes that a market exists for wood not being used by the mill and another party is prepared to use that opportunity. At a time when major changes are occurring in the forest industry, this provision increases the Minister's ability to act in the public interest when new industries can help Saskatchewan's economy to grow.

Reduced Licensing Requirements

An important aspect of the results-based regulatory approach is to simplify administrative processes and reduce overlapping requirements without compromising forest protection. Licences will no longer be required to commercially harvest forest berries, fruits and mushrooms. Pickers will have to follow the code and will be subject to other statutes for such things as camp waste. Should the impact of such activities become significant, the Minister will have the option of requiring pickers to register with the ministry to facilitate inspections.

Licences to operate a mill processing forest products will no longer be required. The disposal of manufacturing wastes from such facilities will be governed by The Environmental Management and Protection Act. Mill operators will still be required to keep records.

Persons clearing leased agricultural areas of trees will only require a licence if the timber is to be manufactured or taken from the lease.

Public Information

One of the principles of a results-based regulatory approach is transparency and public access to information on which the Minister bases decisions. All information submitted to the Minister as a requirement of the act will be public information. A person may request that information that reveals proprietary, competitive or trade secret matters be kept confidential for up to five years.

Administrative Penalties

Penalty amounts will not be increased as was proposed in the previous round of consultation. More effective compliance will be achieved by focusing on problem analysis and continual improvement.

Administrative penalties will apply to all persons conducting activity regulated by FRMA. Persons conducting activities that do not require a licence, for example harvesting mushrooms and berries for commercial sale, will have to comply with any requirements set

out in the Saskatchewan Environmental Code. The application of administrative penalties will be broadened from the current list of licensee activities to apply to all breaches of the act, regulations or the code.

The time limit on issuing an administrative penalty has been changed from three years after the activity occurred to three years after the ministry becomes aware of an act or omission.

A right to appeal administrative penalties to a judge of the Court of Queen's Bench has been provided. The form of this appeal will be the same as that provided to all industries subject to The Environmental Management and Protection Act. The appeal is on matters of law and the judge may confirm the penalty, change the amount of the penalty or quash the Minister's decision to issue a penalty.

Before the Minister issues an administrative penalty, the recipient of the penalty has the right to be heard by the Minister. This right is sufficiently flexible to allow the ministry to explore different methods of assuring that a balanced presentation of the facts is made before the Minister makes a decision.

Forest Remediation Order

A new order has been included in the act and is based on a similar provision to be included in The Environmental Management and Protection Act. This order broadens the Minister's authority to direct persons to repair forest damage that they have caused in contravention of the act, regulations or the code. It supports the Minister's existing authority to stop damaging activity by setting out a process to have the damage repaired. This order will be one tool for addressing findings from audits and inspections.

A person will be given written notice of the Minister's intention to issue an order and have thirty days to provide a written argument in response. Should the person to whom an order is issued fail to carry out the order, a process is set out for the Minister to have the work done and to recover the costs from the person. As with administrative penalties, persons aggrieved by such an order can appeal to a judge of the Court of Queen's Bench on questions of law.

Advisory Committees

The Minister's current authority to establish committees to advise on policy, science and local forest matters has been consolidated into one general provision that allows the Minister to establish, with Cabinet's approval, one or more committees to advise on any matter respecting forest resources. The obligation to establish a Forest Policy Advisory Committee is no longer required due to new government initiatives to consult with forest stakeholders and Aboriginal people (Enterprise Saskatchewan being one example). Future advisory groups will be created to support broader government initiatives for the whole of the economy and province.

Saskatchewan Forest Accord

The requirement to prepare a Saskatchewan Forest Accord every decade within two years of preparing a report on the state of the provincial forest will be repealed. The purpose of the accord was to set out general, long-term, province-wide principles, policies and goals for managing forest resources. Along with the Ministry of Environment, other government ministries and agencies set strategic direction for managing forested lands. Future forest policy will be part of government strategies for the sustainable growth of the province and as such will be integrated with strategic direction for all aspects of the environment. The requirement to report on the state of provincial forests will be retained as a key source of information for the state of the environment report and also as a source of information on which to base new forest policy.

Integrated Forest Land Use Planning

Some of the current land use planning provisions in the FRMA will be kept until such time as lands legislation is amended to set out a new regional land planning framework for Saskatchewan. The Minister's current obligation within the provincial forest to set out planning units, develop plans and have them reviewed by the public will become an option to be exercised in a way that is co-ordinated with the way that land use planning will evolve across all of Saskatchewan.

APPENDIX

Proposed Changes to The Forest Resources Management Act

The following table contains references to *The Forest Resources Management Act* where the amendments constitute a change in the intent or authority set out in the existing provision. Amendments that modernize wording without changing the intent are not listed. The table provides a reference to the subject and if applicable, the section number of the existing provision. Full descriptions of the existing provisions are available on-line at <http://www.qp.gov.sk.ca>. The explanations of the proposed changes are provided in the right column.

| EXISTING PROVISION | EXPLANATION OF PROPOSED CHANGES |
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| Definition of Audit - no existing provision | <ul style="list-style-type: none"> - defines an audit including the general scope of an audit that may be conducted on a licensee’s activities and their compliance with the Act, the Regulations, the Code, licence terms and approved plans |
| Description of Auditor - no existing provision | <ul style="list-style-type: none"> - enables the Minister to appoint or contract a person to act as an auditor to conduct or assist with audits of a licensee’s activities - enables enforcement officers designated by the Minister to conduct audits - linked to provisions respecting the authorities and protection of auditors while conducting audits |
| 2(1)(b) “Crown resource land” – definition amended | <ul style="list-style-type: none"> - removes reference to park lands as the Ministry of Tourism, Parks, Culture and Sport will administer timber resources on park lands - linked to proposed consequential amendments of <i>The Parks Act</i> |
| 2(1)(f) “forest land” – definition amended | <ul style="list-style-type: none"> - focuses the application of the Act on Crown lands that are designated as provincial forest, Crown lands on which a licence has been issued and lands administered by the Ministry of Agriculture where forests predominate - retains the authority for government to require a licence for timber on Crown lands outside the provincial forest - if Agriculture and Environment reach agreement on which agricultural lands contain timber that should be managed for the long-term commercial interests of forest companies, then this provision could be used to describe those lands by regulation - includes road allowances outside the provincial forest only if they are forested and share a boundary with ‘forest land’ - excludes park lands established and administered pursuant to <i>The Parks Act</i> as those lands are the responsibility of the Ministry of Tourism, Parks, Culture and Sport |

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| 2(1)(o) “licence” – definition amended | - removes reference to processing facility due to the repeal of licensing requirements for processing facilities under this Act |
| Definition of Qualified Person - no existing provision | - defines qualified person as member of a class of persons that is set out in the Regulations or the Code; or a person designated by the Minister - linked to Minister’s option to approve operating plans for period of time exceeding one year if the plans are submitted by a qualified person |
| 2(1)(bb.1) “standard” - definition amended | - instead of being described in a manual, standards will be described as part of the Code |
| 6 Powers of Minister – amended | - removes references to the licensing of processing facilities - narrows authority to control pesticides to provincial forest land - focuses the legislation to forested land for which the ministry has the responsibility of setting long-term management objectives - provides the option of establishing a registry by regulation that enables the Minister to specify activities that must be registered with the ministry - provides an option for establishing regulations that enable the Minister to specify conditions respecting financial assurances. Financial assurances may be used for work required under a stop work order or a forest remediation order - provides for the development and establishment of standards or requirements within the Code for any matter governed by this Act |
| Standards and requirements - no existing provision | - requires that any standards or requirements set out in the Code must be published in the Gazette and made public in a manner the Minister considers appropriate |

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| <p>Alternate requirements - no existing provision</p> | <ul style="list-style-type: none"> - enables the Minister to approve alternate criteria, terms, conditions or requirements to those set out in the Code if the Minister is satisfied that the alternative provides an equal level of protection - requires that a person must comply with the directions of the Minister if they wish to undertake activities under the alternate criteria, terms, conditions or requirements |
| <p>10 Saskatchewan Forest Accord - repeal</p> | <ul style="list-style-type: none"> - repeals requirements in lieu of a broader government policy developing processes that incorporates all industry sectors |
| <p>11 Forest management committees - amend</p> | <ul style="list-style-type: none"> - repeals existing provisions respecting the policy advisory committee and the science advisory board, as other processes and advisory groups have been established by government to involve the forest industry and other interested parties in strategic forestry planning, reviews and developments - replaces the existing provisions with one that provides the Minister with the option of establishing advisory committees to advise or assist the Minister on any forest matters - requires the approval of the Lieutenant Governor in Council before the committee is appointed - requires that the committees report to the Minister as directed by the Minister |
| <p>14 Integrated Forest Land Use Plan - amend</p> | <ul style="list-style-type: none"> - changed to an enabling provision from a mandatory requirement - removes obligation for the Minister to revise a land use plan when a forest management plan is revised |
| <p>17 Forest Products Crown Property - amend</p> | <ul style="list-style-type: none"> - requires that a person be in compliance with the Code before harvesting or acquiring right or property in any forest product - exempts persons from having to obtain a licence when harvesting berries, fruits, renewable parts of plants and mushrooms, for sale or barter as long as the plant or tree is not damaged - the ministry will continue to promote best practices and retain the authority to stop damage when it is occurring - requires that Christmas trees are not harvested from areas that have been planted or otherwise tended by the Minister or a licensee |
| <p>Forest lands used for</p> | <ul style="list-style-type: none"> - provides a licensing exemption to address situations where an |

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| agricultural purposes - no existing provision | agricultural lease holder is clearing the land for the production of cereal or other seed or forage crops and there is no commercial interest in the timber - requires a licence if the timber is to be manufactured into products or is to be removed from the lease on which it was harvested - provides that the exemption does not apply to lands designated pursuant to <i>The Wildlife Habitat Protection Act</i> |
| 18.1 Processing facility to be licensed - repeal | - this requirement is being repealed - requirements for the operation of the facilities will be handled under the new <i>Environmental Management Protection Act</i> |
| Processing facility records - no existing provision | - requires that the operator of a facility processing Crown forest products keep records and make them available for inspection on the request of an auditor or forestry officer |
| 19.1 Licensee to comply with code - amended | - requires that a licensee must comply with the Code unless specified in an approved plan or authorized by the Minister |
| 19.2 to 19.5 Manuals - repeal | - references to manuals are repealed - reflects the establishment and use of the Code to implement a results-based management model |
| 26 Fees for forest management - amended | - requires that the establishment of a forest management fund include a trustee as well as the Minister and the licensee |
| 36 Changes, amendments and alterations – amended | - provides flexibility to make changes to a forest management agreement when the Minister and the licensee are in agreement |
| 38 Forest management plans and operating plans - amended | - enables the Minister to authorize the holder of a forest management agreement to submit their operating plans at intervals greater than a year - requires that the plans are prepared to the satisfaction of the Minister and be signed by a qualified person |
| 39 Preparation of plans by forest management agreement holder - amended | - repeals subsections setting out most forest management plan content requirements as they will be set out in the Code - retained provisions respecting consultation to assure aboriginal and other people of the significance that the ministry places on consultation |
| 39.1 Approval or refusal of plan re forest | - approval of a forest management plan granted pursuant to <i>The Forest Resources Management Act</i> that is also a development |

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| management agreement – amended | within the meaning of <i>The Environmental Assessment Act</i> is deemed to be an approval pursuant to section 15 or 16 of <i>The Environmental Assessment Act</i> |
| 45 Plans re term supply licence – amended | <ul style="list-style-type: none"> - enables the Minister to authorize the holder of a term supply licence to submit their operating plans at intervals longer than a year - ensures that the plans are prepared to satisfaction of the Minister and signed by a qualified person |
| 46 Preparation of plans by term supply licence holder - amended | <ul style="list-style-type: none"> - requires that term supply licence holders prepare their forest management and operating plans in accordance with the Code and any existing integrated forest land use plans - requires that forest management plans and operating plans prepared by the holder of a term supply licence must describe how the holder proposes to manage the licence area |
| 46.1 Approval or refusal of plan re term supply licence - amended | - an approval of a forest management plan granted pursuant to <i>The Forest Resources Management Act</i> that is also a development within the meaning of <i>The Environmental Assessment Act</i> is deemed to be an approval pursuant to section 15 or 16 of <i>The Environmental Assessment Act</i> |
| Changes to approval - no existing provision | <ul style="list-style-type: none"> - enables the Minister to cancel, amend, alter or suspend an approved operating plan, or licence (other than a forest management agreement) if new information becomes available that an activity of the licensee will result or has resulted in a contravention of any Act or regulation or any other law - sets out the process associated with notifying the licensee of the intended actions and provides an opportunity for the licensee to make representation to the Minister |
| 58 Closure of roads - amended | - defines what is meant by a closed road to assist with the enforcement of the prohibition on travel upon closed roads |
| Forest remediation order - no existing provision | <ul style="list-style-type: none"> - enables the Minister to order the repair of damage to Crown resource land where an activity has been carried out in contravention of the Act, the terms of a licence, the Regulations or the Code and the activity may cause, has caused or is causing damage to Crown resource lands - will address damage or potential damage that is a result of a past activity and found in an audit or an inspection - sets out the circumstances when the Minister may carry out the remediation order - enables the Minister to recover the costs of carrying out the forest |

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| | <p>remediation order</p> <ul style="list-style-type: none"> - enables the Minister to file a certificate with the Court of Queen's Bench that sets out the costs and the person from whom the costs and expenses are recoverable - provides the person to whom the certificate is served with 30 days to make representation to the Minister - provides a person aggrieved by a forest remediation order or a certificate the option of appealing the order or certificate to the Court of Queen's Bench |
| Audits - no existing provision | <ul style="list-style-type: none"> - establishes the authorities of auditors when conducting audits including the right to enter and inspect commercial premises, obtain copies of records and to take samples and measurements - makes it an offence to obstruct an auditor or anyone assisting an auditor |
| 78 Administrative penalty - amended | <ul style="list-style-type: none"> - modernizes existing drafting language to reflect the ministry's intent to administer administrative penalty provisions in this and other legislation in a consistent manner - broadens the application of administrative penalties from licensees to any person |
| Appeal to Court of Queen's Bench re administrative penalty - no existing provision | <ul style="list-style-type: none"> - sets out Court of Queen's Bench appeal provisions for persons aggrieved by a decision of the Minister to impose an administrative penalty |
| 79 Offences and penalties - amended | <ul style="list-style-type: none"> - makes it an offence not to comply with a standard in a code whether a person has been licensed or not |
| 83 Limitation of prosecution - amended | <ul style="list-style-type: none"> - enables the Minister to prosecute offenders within 3 years of when the Minister first becomes aware of an alleged contravention rather than 3 years after the alleged offence occurred |
| 93 Suspension or cancellation of a licence - amended | <ul style="list-style-type: none"> - allows for reallocation of wood if a licensee closes a processing facility for a period exceeding 12 consecutive months - provides an option for the Minister to suspend a licence in part and reallocate the underutilized wood regardless of existing licence terms that grant the licensee a longer time to remedy the default |
| Public information - no existing provision | <ul style="list-style-type: none"> - establishes the authority for the Minister to disclose information to the public that was submitted to the Minister pursuant to this Act, the Regulations, the Code or an approved plan - enables the person submitting the information to request that the information be kept confidential for a period up to 5 years if the information contains matters that are of a commercial, financial, scientific or technical nature; and would reveal proprietary |

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| | business, competitive or trade secret information about that person's business |
| Regulations - no existing provisions | <ul style="list-style-type: none"> - enables regulations to be made respecting a class of persons that may be 'qualified persons' - allows for regulations to be established respecting adopting a code - allows for regulations to set out what provisions the Code may contain |
| Regulations 99(1)(kk) - amended | - amended to allow for regulations to be established that exempt persons from any or all of the provisions of the Code or the requirements of a licence |