

File: 19570-00

AUG 16 2010

BY EMAIL

To: Regional Executive Directors
District Managers

From: Dana Hayden
Deputy Minister

Re: Policy Regarding Special Use Permit Administration

I have approved the attached policy, which provides guidance regarding a number of measures designed to streamline the administration of Special Use Permits (SUPs) as well as reduce the liability of the Crown for costs associated with clean up and restoration of SUP sites. The policy was developed by Resource Tenures Branch (RTB) with input from regional staff and industry representatives and applies to all SUPs other than SUPs issued for roads.



The policy addresses three recommendations made by the Operational Issues Forum Working Group on SUPs: SUP extensions, SUP term length, and linking of SUP deposits to major licence deposits. The policy also addresses clean up and restoration of SUP sites and provides guidance for different SUPs depending on when they were issued. Revised SUP templates, which reflect the policy, are available for use on the RTB SharePoint site. A revised roads SUP template and guidance is also under development.

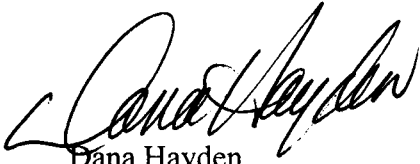
Please share this information with your staff involved in the issuance and ongoing administration of SUPs. If you have any questions or comments regarding the policy, please contact your regional staff member responsible for SUPs:

Southern Interior Forest Region--David Baird, Tenures Officer
Coast Forest Region--Steve Edwards, Tenures Forester
Northern Interior Forest Region--George Halliday, Timber Tenure Specialist

Regional Executive Directors and District Managers

Contacts at Resource Tenures Branch:

Non-Roads SUPs--Kelly Finck, Senior Timber Tenures Forester
Roads SUPs--Wayne Hagel, Policy and Standards Specialist



Dana Hayden
Deputy Minister

Attachment(s): Policy 8.27 – Special Use Permit Administration

pc: Les Kiss, Vice President, Forestry, Coast Forest Products Association
Archie MacDonald, General Manager, Forestry, Council of Forest Industries
David Baird, Tenures Officer, Southern Interior Forest Region
Steve Edwards, Tenures Forester, Coast Forest Region
George Halliday, Timber Tenure Specialist, Northern Interior Forest Region
Kelly Finck, Senior Timber Tenures Forester, Resource Tenures Branch

**Volume 1 – Resource Management
Chapter 8 – Tenure Administration**

Policy 8.27 – Special Use Permit Administration

Responsible Branch: Resource Tenures Branch

Scope

This policy establishes the Ministry of Forests and Range (MFR) approach to administration of special use permits (SUPs) issued pursuant to the Provincial Forest Use Regulation under the *Forest Practices Code of British Columbia Act*, with the exception of SUPs issued for roads.

It establishes the recommended approach to non-road SUPs for the following:

- replacements, extensions, and terms of SUPs;
- linking of an SUP to the deposit of a major licence; and
- clean up and restoration on Crown land authorized for use by SUPs.

Background

The Provincial Forest Use Regulation (‘the regulation’) of the *Forest Practices Code of British Columbia Act* enables the district manager (DM) to issue an SUP that authorizes a person to use Crown land for specified purposes, e.g. log dumps, log sorts and shops.

The regulation also:

- allows for replacement of SUPs at the end of the term
- does not establish a set term or maximum term for an SUP
- enables the DM to require a deposit to ensure conditions of the permit are met and to protect personal property
- provides the DM authority to include conditions in an SUP that are necessary to conserve forest resources, including clean up and restoration of the site under the permit.

Operations on areas authorized by SUPs are subject to the requirements, standards and risk-based screening processes established under the *Environmental Management Act* (EMA) and administered by the Land Remediation Section in the Ministry of Environment (MOE).

Policy

PART ONE: SUP Replacements, Extensions and Terms

Extensions and Replacements

When an SUP term is nearing its end, and the holder indicates that they wish to continue to occupy the site, the DM has the option of extending the SUP by amending the expiry date rather than replacing the SUP.

Extensions, should be accomplished through a letter to the SUP holder acknowledging and approving a request for an extension to the term of the SUP from the holder i.e. the holder must agree to having the SUP extended.

The SUP should be replaced if the use of the site or obligations under the SUP are changing, or any other content, other than the term of the permit, is changing.

Terms

Where the use of the site under the SUP is expected to be long-term, it may be appropriate to issue, replace or extend the SUP for a timeframe that is commensurate with the intended use of the site.

In determining the level of risk associated with issuing a longer term SUP, the following should be considered:

- Whether the SUP holder has an established history that would indicate an acceptable risk with a longer term SUP.
- Whether the plan for the site is sufficiently detailed and supports a long-term use.
- Whether the SUP holder has made a large investment in permanent or semi permanent structures (higher level of investment would suggest a longer term is appropriate).
- Whether the SUP appears to be critical to the long-term operations of the SUP holder's forestry operations in the area.

PART TWO: Linking of SUPs to Deposits of Major Licences

Section 9(2)(c) of the regulation authorizes the collection of a deposit for an SUP. As per Section 9(3) of the regulation, the district manager may use all or a portion of the deposit to cover costs resulting from failure of the SUP holder to meet the permit conditions, and as security in cases where personal property owned by persons other than the SUP holder or government is situated on land under the permit.

It is acceptable for one or more SUPs to be linked to the deposit held for a major licence if the SUP holder agrees, the SUP pertains to an area covered by the major licence and both the SUP and the major licence contain wording that enables the linking of the deposit. The SUP

templates have been updated to include this option. All Tree Farm Licences currently contain the necessary wording. However, if the major licence is a Forest Licence, it may need to have wording amended into the deposits section, as follows:

9.13 The Licensee agrees that the deposit held under paragraph 9.03 may be realized in the event of a failure to meet the conditions of a special use permit that pertains to an area covered by this Licence or in the event that the Licensee damages personal property owned by a person other than the Licensee or the government that is on the area covered by the special use permit in accordance with the procedures set out in paragraph 9.04 to 9.12 and the applicable special use permit.

Note that the above clauses are numbered to correspond to the Deposits part in the typical licence of each type. It may be necessary to adjust the numbering if the particular document you are working with has unique numbering.

Where SUPs are linked to a major licence deposit, the amount of the deposit available to the SUP should be documented in the SUP.

Where a major licence deposit is not sufficient for an SUP, it is acceptable to have both an SUP deposit and a link to a major licence deposit, if the permit holder agrees. For example, if a deposit of \$10,000 for the SUP is required, and the client holds a major licence with a \$5,000 deposit, the SUP holder could request to have the SUP linked to the major licence and then post a \$5,000 SUP deposit.

In instances where the SUP holder does not hold a major licence tenure, a separate SUP deposit would generally be required.

PART THREE: Clean up and Restoration

This Part is divided into three sections. SUPs will fall under either section 1 or section 2 depending on when they were originally issued, or the pre-existing condition of the site over which it was issued. Section 3 applies to all SUPs.

It should be noted that, subject to variations that the DM deems appropriate, references to “clean up” in this Part would typically include the following:

- removal of all structures including buildings and storage tanks,
- removal of all equipment, scrap metal, wire rope, tires and similar materials.

References to “restoration” of the site may include:

- closing down sewage lagoons and waste disposal sites
- re-contouring and re-vegetating the area, and
- addressing site contamination.

Section 1-- applies to the following SUPs:

- a) original SUP was issued prior to the effective date of this policy,
- b) any subsequent replacement to the original SUP where its original issuance was prior to the effective date of this policy, and
- c) new SUPs issued after the date of this policy for Crown land where there has been a history of similar industrial use¹.

SUPs that fall under this section should primarily be administered according to the provisions of the most recent SUP that was in place prior to the approval of this policy.

However, it is suggested that:

- to facilitate clean up and restoration, DMs consider adding an additional year to the term of any replacements or extensions to the SUP term and restrict the use of the SUP site in that final year to activities related to clean up and restoration
- between 18 months and one year prior to the expiry date of the SUP, the DM write to the SUP holder requesting a response within 30 days which indicates if they wish to continue to occupy the SUP site
- where an SUP will be extended or replaced, the DM should review the amount of the deposit to ensure it is sufficient to enable clean up of the site
- where an SUP holder indicates that they do not want to continue to occupy the SUP site, or fails to respond within 30 days, the DM should review the SUP and clarify, in writing to the SUP holder:
 - the clean up and restoration expectations of the DM, as per section 9(2)b(ii) of the Provincial Forest Use Regulation
 - that clean up and restoration of the SUP may trigger the requirement to complete and submit a site profile under the EMA; and
 - the clean up and restoration of the SUP site should be completed by the SUP holder prior to the expiry date of the SUP (within six months of the expiry, if the SUP was issued with the additional one year term).

In the case of c) above:

- the prospective SUP holder should be encouraged to conduct an assessment as per Schedule 2 of the EMA Contaminated Sites Regulation, prior to issuance of the SUP or occupation of the site, which will provide them with baseline knowledge of the site condition before occupation.

Section 2-- applies to SUPs, and to any subsequent replacements of those SUPs, originally issued after the effective date of this policy on land where the Crown has no prior knowledge of the site being contaminated at the time of the original SUP issuance.

¹ Similar industrial use under an SUPs refers to uses such as a logging camp, log dump, dryland sort, equipment repair facility, etc. It would not be applicable if the area had a history of logging only; in such cases a new SUP would be issued and Section 2 of this policy would be applicable.

SUPs under this section should be administered according to revised provisions, which require verification that the site is within contamination limits when vacated. These SUPs should include provisions to address the following provisions:

- authorize only the uses and activities proposed in a plan² accompanying the SUP application and accepted by the DM
- specify the intended future land use for the site after the SUP expires, and establish the clean up requirements and contamination limits applicable for the future use of the land
- enable replacement or extension of the SUP 18 months to one year prior to the expiry date
- restrict the use of the SUP site for the last year of the SUP's term to only those activities related to clean up, restoration and any EMA requirements
- require the holder to fulfill all EMA requirements related to the holder's use of the site, including a triggered site profile and any site investigations required by MoE and to provide MFR with a copy of any related submissions
- require clean up to be completed at least six months prior to expiry³
- require a separate SUP deposit or a link to a major licence deposit to allow for a remedy for non-conformance with SUP requirements. Where there is a link to a major licence deposit, the amount available to the SUP should be documented
- The deposit amount should be an amount that is determined according to the specifics of the site. Suggested amounts (to be used as a guideline if no site-specific estimate is available) based on the estimated cost of clean up and potential risk:
 - ▲ \$50,000 in cases where the SUP authorizes activities that are listed in Schedule 2 of the EMA Contaminated Sites Regulation⁴, or
 - ▲ \$10,000 in cases where no Schedule 2 activities are authorized.
- require the holder to provide an acceptable MoE instrument⁵, or provide other documentation that is acceptable to the DM, six months prior to the expiry of the SUP, that establishes that the site is below the MoE contamination limits set for the intended future use of the site.

Section 3-- regardless of when an SUP was issued or its current status, if MFR staff become aware of site conditions that appear to threaten the health or safety of humans,

² The Provincial Forest Use Regulation requires applicants to submit "a plan that sets out how the land will be used". The regulation also relies on the DM's opinion that the issuance "will not impair proper management and conservation of forest resources..." Depending on circumstances, it may be reasonable for the DM to require that the plan include available information about past activities on the site, any actual or perceived site contamination, and whether any of the applicant's proposed uses and activities are listed in Schedule 2 of the EMA Contaminated Sites Regulation.

³ This will allow time for MFR to monitor and address any non-conformance while the SUP is still in effect.

⁴ Default amounts for deposits are based on nominal costs of \$10,000 for clean up and restoration and \$40,000 for detailed site investigation.

⁵ An acceptable MoE instrument issued under the EMA is either a Determination of Contaminated Site indicating that the site is not contaminated or a Certificate of Compliance indicating that the site has been remediated and meets the environmental quality standards under the Contaminated Sites Regulation.

aquatic life or wildlife, they should immediately report the information to MOE and work with them to assess and manage the risks.

References

Forest Practices Code of British Columbia Act s. 205

<http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcact/part10.htm>

FPCBC – Provincial Forest Use Regulation BC Reg 175/95

<http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcaregs/pforuse/pfur.htm>

Environmental Management Act – Part 4 – Contaminated Site Remediation

http://www.qp.gov.bc.ca/statreg/stat/E/03053_04.htm

EMA – Contaminated Sites Regulation, BC Reg. 375/96

http://www.qp.gov.bc.ca/statreg/reg/E/EnvMgmt/EnvMgmt375_96/375_96_00.htm

Fact sheets and guidance from Ministry of Environment, Land Remediation Section

<http://www.env.gov.bc.ca/epd/remediation/index.htm>

Management of Provincial Contaminated Sites Policy (2004)

<http://www.al.gov.bc.ca/clad/ccs/policy.html>

Site Profile fact sheet.

http://www.env.gov.bc.ca/epd/remediation/fact_sheets/pdf/fs19.pdf