

Draft Discussion Paper

Industry Recognized Practices Development

On April 21, 2004, the BC Legislature gave final approval to the *Wildfire Act*. The passing of the Regulation on March 31, 2005 brought the *Wildfire Act* into full force. Since that time, there have been a number of minor amendments to the Act and Regulation.

Prior to the *Wildfire Act* and *Regulation*, stakeholders have followed the legislative requirements of the *Forest Practice Code of British Columbia Act* and the *Forest Fire Prevention and Suppression Regulation* in the management of wildfire on Crown land.

The *Wildfire Act* allows the Minister to establish policies and priorities for the efficient use of fire-fighting resources of the government. The Act clarifies the obligations and priorities of the government for the protection of life, property, forest and grass lands

The new *Wildfire Act* imposes several new requirements for industrial activities on forest and grass lands and applies to many other industrial sectors beyond the forest industry.

Wildfire Act: <http://www.for.gov.bc.ca/tasb/legsregs/wildfire/wildfireact/wildfire.htm>

Wildfire Regulation:

<http://www.for.gov.bc.ca/tasb/legsregs/wildfire/wildfirereg/wildfirereg.htm>

1. Application of the Act to industrial operations

The Act now applies to industrial activities, as well as forestry operations on or near forest and grass lands.

"industrial activity" includes (a) land clearing, and (b) other activities included in this definition by regulation, but does not include activities excluded from this definition by regulation;

The Regulation prescribes the following activities as industrial activities:

(3) Each of the following activities is included in the definition of "industrial activity" in section 1 of the Act:

(a) debris piling;

(b) mechanical modification of forest debris;

(c) railway operations;

(d) utility transmission operations;

(e) mining operations;

(f) silviculture treatments;

(g) wood milling, processing and manufacturing;

(h) timber harvesting;

(i) road construction, road maintenance or road deactivation;

(j) yarding logs using helicopters or lighter than air vehicles;

(k) operating a power saw on a road or a landing or in a log sort area;

(l) the use of machinery on a road or a landing or in a log sort area;

(m) loading logs on a road or a landing or in a log sort area. "Site of an industrial activity" means the area on which, or within 500m of which a person is carrying out an industrial activity

"mining operation" means the operation and maintenance of a mine and includes any land clearing or construction of a mine;

"railway operation" means (a) the operation and maintenance of the engines, locomotives and rolling stock of a railway, and (b) the repair, construction, reconstruction and maintenance of the railway track and the railway right of way;

"utility transmission operation" means the operation, transmission, construction, establishment, maintenance and repair of electrical, oil, gas, radio, microwave, and telephone service;

2. Requirement for sufficient fire fighting tools

If you are carrying out an industrial activity within 300m of forest land or grass land, Section 5 of the Regulation requires that sufficient fire-fighting tools are available if there is a fire risk, regardless of the time of year. This is a significant change and requires more due diligence on the part of stakeholders to ensure that tools are available during periods previously not considered.

5) If there is a risk of a fire starting or spreading on an area that is (a) forest land or grass land, or (b) within 300 m of forest land or grass land,

a person who carries out an industrial activity at a site in that area must ensure that fire fighting hand tools are available at that site in a combination and type to properly equip each person who works at the site with a minimum of one fire fighting hand tool.

"grass land" includes land that (a) previously supported grass and is not in other use, or (b) is in use for the production of forage or is lying fallow, having previously been used for the production of forage; but does not include land excluded from this definition by regulation;

"forest land" includes land that previously supported trees and is not in other use, but does not include land excluded from this definition by regulation.

The Wildfire Regulation specifically states that sufficient fire fighting tools are a requirement. The Regulation no longer details the type, number and specifications of tools, pumps, and other fire fighting equipment. Stakeholders must now provide “sufficient fire fighting tools,” which is defined in the Regulation as “*hand tools in a combination and type and of an appropriate number to properly equip all persons taking fire control action, including but not limited to shovels, axes, pulaskis, hand tank pumps, and fire extinguishers*”. Additionally, the old legislation defined the period when tools were required (April 1 to October 31).

3. Definition of high risk activities

There are now more high-risk activities defined by the Regulation, which were previously under risk classification B. In the old legislation, activities were classified into three risk categories: A, B and C; or High, Moderate and Low. The new classification system is divided into two classes: 1) high-risk; and 2) those that are not high-risk. As a number of obligations apply only to high-risk activities, it is important for stakeholders to understand which activities are classified as high-risk. This change could require stakeholders to go to early shift for activities that were not classified in a high-risk category under the old legislation.

"high risk activity" means each of the following:

(a) mechanical brushing;

(b) disk trenching;

(c) preparation or use of explosives;

(d) using fire- or spark-producing tools, including cutting tools;

(e) using or preparing fireworks or pyrotechnics;

(f) grinding, including rail grinding;

(g) mechanical land clearing;

(h) operating a power saw other than while doing so on a road or a landing or in a log sort area;

(i) rock drilling;

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- (j) tree processing, including de-limbing;
 - (k) welding;
 - (l) portable wood chipping, milling, processing or manufacturing;
 - (m) log forwarding other than by logging truck on a road;
 - (n) skidding logs;
 - (o) yarding logs using cable systems;
 - (p) operating a vehicle equipped with metal tracks, chains or studs other than operating it
 - (i) for road construction, road maintenance or road deactivation, or
 - (ii) on a road or landing or in a log sort area;
 - (q) clearing and maintaining rights of way, including grass mowing;
3. Requirement for fire suppression system

4. Requirement for fire suppression system

For high risk activities, there is now a new requirement under the Regulation to have “an adequate fire suppression system,” where there is “a risk of a fire starting and spreading.”

6(3) *If there is a risk of a fire starting or spreading, a person carrying out a high risk activity on or within 300 m of forest land or grass land must*

(a) do so in accordance with the applicable restriction and duration set out in Schedule 3 for the Fire Danger Class, and

(b) keep at the activity site (i) fire fighting hand tools, in a combination and type to properly equip each person who works at the site with a minimum of one fire fighting hand tool, and (ii) an adequate fire suppression system.

"fire suppression system" means a system for suppressing fire by delivering water, a suppressant or a surfactant.

"water delivery system" means a system that can

(a) deliver a sufficient volume of water to effectively fight a fire of a reasonably foreseeable size, taking all factors into consideration, including the conditions of any area where the water delivery system may need to be used, and

(b) deliver water to any place (i) at the site of an industrial activity, (ii) on the burn area or site of the high risk activity, or (iii) reasonably adjacent to the burn area or the site of a high risk activity.

In addition to the above activities, fire fighting hand tools and fire suppression systems are required as per Sections 13 (fire control activities), Section 21 (category 2 open fire), and Section 22 (category 3 open fire). The Wildfire Regulation requires persons carrying out an industrial activity to make available fire fighting tools and suppression systems for fighting any fire on Crown land, as per Section 13. If you are lighting a category 2 fire under Section 21, or a category 3 fire under Section 22, such equipment must be on site.

5. Application of the Act and Regulation within local government areas

The applicability of certain provisions of the *Wildfire Act* and *Regulation* within regional districts, improvement districts, and municipalities is unclear. Both the Act and Regulation apply in their entirety within these areas where there is no local government bylaw that deals with fire prevention and/or open fires. Where there is such a bylaw, the application of the *Wildfire Act* and Regulation is potentially altered.

Wildfire Act – An Overview

The following section has been copied from the ABCFP Forest Legislation and Policy Reference Guide 2005: Forest Management and serves as a useful introduction to the new Wildfire Act

Changes to Forest Fire Legislation in British Columbia

Effective March 3, 2005 the *Wildfire Act* and Regulation incorporated provision outlined in Sections 75 to 95 of the *Forest Practices Code of British Columbia Act* and the Forest Fire Prevention and Suppression Regulation into the new Act. The development of the *Wildfire Act* was a lengthy process and took over four years. The Legislative Committee tasked with policy review and the drafting requirements of legislation was formed in 2001. The 2003 fire season delayed the implementation of the Act and Regulations. The delay was primarily in response to the Provincial Firestorm Review (2003) and the need to incorporate public input and recommendations from the review into the Act.

On April 21, 2004 the BC Legislature gave final approval to the *Wildfire Act*. The passing of the Regulation on March 31, 2005 brought the *Wildfire Act* into full force. Minor amendments to the Wildfire Regulation were passed April 15, 2005.

The *Wildfire Act* allows the Minister to establish policies and priorities for the efficient use of fire-fighting resources of the government. The Act clarifies the obligations and priorities of the government for the protection of life, property, forest and grass lands. See Wildfire Act Highlights in Appendix B.

Legislative Comparison (*Forest Practices Code of BC Act and the Wildfire Act*)

The following outlines the differences between the *Forest Practices Code of British Columbia Act* and the *Wildfire Act* and the Rationale for Change.

Code Act The *Forest Practices Code of BC Act* contains sections dedicated to wildfire protection.

Wildfire Act Sections 75 to 95 of the *Forest Practices Code of BC Act* have been moved into a new Act – the *Wildfire Act*.

Rational The *Wildfire Act* is stand-alone legislation that improves government’s ability to provide for public safety, while efficiently recovering justifiable expenses, including cost-sharing arrangements.

Code Act **Definitions**

Wildfire Act The terms fire control activity, forest land, industrial activity, local government and official have been updated or added to the *Wildfire Act*

Rational Updated definitions support provisions based on previous court interpretations.

Code Act **Operational restrictions** In general, the *Wildfire Act* and Regulation carry additional restrictions on forest industry operations.

Wildfire Act Industrial operations now include the forest industry as well as utility transmission and railway operations

Rational Fires are associated with power and gas transmission lines and along railways. These industrial operators also have obligations for fire prevention and mitigation works.

Code Act **Forest Protection Requirements**

Wildfire Act Duties to report fires and care in using fire have been updated. The *Wildfire Act* only applies outside local government jurisdictions where bylaws that meet or exceed the intent of a

provision are in effect. It streamlines industry requirements for fire preparedness planning and firefighter training.

Rational The change is based on experience in legal proceedings. It also clarifies roles and responsibilities for assisting local governments.

Code Act **Cost Recovery** To recover suppression costs resulting from a wildfire, the Province must commence an action in BC Supreme Court and must establish the cause of the fire, the liability of the defendant based on negligence or contract, and the extent of its costs and losses resulting from the fire.

Wildfire Act Under the *Wildfire Act*, the Province has the power to determine the party at fault for the cause of a wildfire, the amount of the suppression costs incurred to fight the fire, and the value of the timber lost or destroyed as a result of the fire.

Rational The *Wildfire Act* clarifies cost recovery and updates the process so as to be in harmony with other legislation (ie. *The Forest and Range Practices Act*)

Code Act **Compliance and enforcement** provision related to the general forest protection provisions are contained in Part 6.

Wildfire Act The *Wildfire Act* contains:

- A comprehensive set of administrative remedies (including appeals) similar to those of the *Forest Practices Code of BC Act* and *Forest and Range Practices Act*, and
- A comprehensive set of offenses and penalties similar to those of the *Forest Practices Code of BC Act* and the *Forest and Range Practices Act*.

Rational The compliance and enforcement provisions contained in the *Wildfire Act* (both administrative remedies and offences) are very similar to those of the *Forest and Range Practices Act*. The liabilities for failure to perform a similar requirement will result in similar sanctions.

- Code Act** The *Forest Practices Code of BC Act* does not address the use of fire as a land management tool.
- Wildfire Act** To achieve land and resource management objectives the government is empowered, through the *Wildfire Act* to use open fire at its discretion for fire control and to achieve land management objectives.
- Rational** This change facilitates government management objectives related to habitat enhancement, ecosystem restoration and fire hazard reduction.
- Code Act** Cost Sharing
- Wildfire Act** The *Wildfire Act* enables the government to enter into cost-sharing arrangements and to have the monies received contribute to fire suppression activities. Amendments to the Annual Rent Regulation and the *Insurance Premium Tax Act* reflect this direction.
- Rational** This change is consistent with the government’s direction for cost-sharing model for fire suppression under the Ministry of Forests Service Plan.
- Code Act** Broad powers
- Wildfire Act** The *Wildfire Act* maintains government authority to restrict use of open fires, and to restrict access within an area. In cases where a fire has occurred, the *Wildfire Act* specifies the general obligations of the person who started the fire and the initial fire control measures they must carry out.
- Rational** The *Wildfire Act* gives forest officials broad and flexible powers to prohibit or restrict specific fire risk activities and/or areas throughout British Columbia.