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August 25, 2005

VIA EMAIL

To: Tim Sheldon, Assistant Deputy Minister, Operations Division
All Regional Executive Directors

From: Jim Langridge
Director
Resource Tenures and Engineering Branch

Dan Graham
Director
Compliance and Enforcement Branch



**Re: Exceeding Maximum Harvestable Volume
on a Forestry Licence to Cut or Community Salvage Licence**

This is to provide guidance on the administration of Section 75.21 of the *Forest Act*, and its interaction with Section 52 of the *Forest and Range Practices Act* (FRPA).

Section 75.21 of the *Forest Act* provides that the holder of a forestry licence to cut or a community salvage licence must not exceed the maximum harvestable volume specified in the licence. If the holder of the licence¹ exceeds the maximum harvestable volume, the holder is required to pay a monetary penalty. The penalty is the product of the “volume of timber that exceeds the maximum harvestable volume” and the “prescribed rate”.

The prescribed rate is specified in Section 2 of the Cut Control Regulation (B.C. Reg. 578/2004 as amended by B.C. Reg. 148/2005).

The regulation provides that the penalty payable for the portion of the volume of timber harvested in excess of the maximum harvestable volume is based on the prescribed rates as summarized in Table 1.

¹ In this memorandum, “Licence” means a forestry licence to cut or community salvage licence.

Table 1 – Overview of Prescribed Rate for Excess Volume

Excess Volume	Prescribed Rate
For the portion of the excess that is: <ul style="list-style-type: none"> ○ ≤ 10% of the total volume of timber authorized for harvested over the term of the licence. ○ > 10% of the total volume of timber authorized for harvested over the term of the licence. 	<p><u>Average stumpage rate</u> that was applicable to timber harvested under the licence during the last year in which stumpage was payable in respect of that timber.</p> <p><u>Twice the average stumpage rate</u> that was applicable to timber harvested under the licence during the last year in which stumpage was payable in respect of that timber.</p>

Ministry Policy – Transitional Enforcement Provisions

Section 75.21 of the *Forest Act* came into force on May 13, 2004. However, the amendment to the Cut Control Regulation did not come into force until December 13, 2004, so it would not be appropriate to penalize a holder of a licence for excess volume pursuant to Section 75.21 during the interim period. This is because the penalty had not crystallised until the penalty rate was established by regulation.

For the period December 13, 2004 to June 30, 2005, it is appropriate that a period of grace be granted to the holders of licences where the harvested volume exceeded the limit specified in the licence. This period of grace is to ensure that holders of the licence had a reasonable opportunity to become aware of the new provisions of the Cut Control Regulation.

Therefore, the ministry will only penalty bill where the volume of timber harvested exceeds the maximum harvestable volume specified in the licence and where the date of scale for that timber was after June 30, 2005. The volume of timber harvested that exceeds the maximum harvestable volume specified in the licence will be penalty billed based on the prescribed rates.

Section 52 – Unauthorized Harvest

Section 52 (Unauthorized Harvest) of FRPA also applies where the holder exceeds the amount they were authorized to harvest. However, it may not be appropriate to levy penalties under both Section 52 of FRPA and Section 75.21 of the *Forest Act* regime for the same contravention.

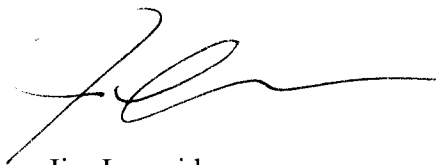
For the period prior to July 1, 2005, Compliance & Enforcement (C&E) staff will pursue, subject to their standard exercise of discretion, the application of Section 52 of FRPA where the holder has exceeded the volume limit specified in the licence.

After June 30, 2005, C&E staff will, as a general rule, not proceed with allegations of non-compliance with Section 52 of FRPA due solely to harvesting in excess of the authorized volume on a licence. However, C&E staff will continue to deal with those situations where a person cuts Crown timber contrary to the other specifications within a licence such as: harvesting a species or grade that is specified as reserved, creating an opening size greater than that authorized, harvesting outside of the Exhibit A boundary, or harvesting outside the term of the licence.

For further information, contact:

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Note 1: More detailed guidance has previously been provided to C&E staff in the form of a C&E Bulletin titled, Guidance to C&E Program Staff on the Interaction Between Section 75.21 of the *Forest Act* (and Section 2 of the Cut Control Regulation) and the Application of Section 52 (Unauthorized Harvest) of FRPA, dated July 2005.



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