



General Bulletin

Number 27

October 19, 2000

Enforceability of Free Growing Obligations on Pre-Code Prescriptions

Introduction

In 1987 legislation was introduced which obligated the holder of a major licence, at his own expense, and in accordance with the regulations and pre-harvest silviculture prescription to carry out basic silviculture. Early legislative requirements were somewhat vague in terms of free growing criteria and a series of legislative amendments have added to the complexity of administering these prescriptions.

The purpose of this bulletin is to:

1. Provide a brief history of the legislation and amendments that are pertinent to the obligation of basic silviculture. This summary will emphasize critical points only. It will not provide a detailed account of the legislation and all of the amendments that occurred during this period.
2. Inform statutory decision-makers of their authority with respect to early silviculture prescriptions.
3. Provide licensees with a better understanding of their obligations with respect to areas harvested under early legislation.

History of Legislation

Forest Amendment Act (No. 2), 1987 as retroactively amended by Forest Amendment Act (No. 2), 1993:

This legislation defines basic silviculture and a free growing crop. The legislation also established the obligation for a "major licence" holder to, at his own expense, and in accordance with the regulations and a pre-harvest silviculture prescription, carry out basic silviculture on the land from which the timber was harvested.

Basic silviculture is defined to mean harvesting methods and silviculture operations and other operations that:

1. are for the purpose of establishing a free growing crop of trees of a commercially valuable species, and
2. are required in a regulation, pre-harvest silviculture prescription or silviculture prescription.

This legislation required compliance with prescriptions approved on or after December 17, 1987. If harvesting of timber was completed after September 30, 1987 but before December 17, 1987, basic silviculture was required to be carried out in accordance with directions of the Chief Forester.

Silviculture Regulation in effect April 8, 1988

The 1988 Silviculture Regulation defined a "prescription" as a pre-harvest silviculture prescription and a silviculture prescription. The regulation defined concepts such as "regeneration delay" and "target number" as well as providing a detailed list of prescription requirements. The regulation provided a default of 2 metres for the horizontal distance between well-spaced trees, also known as the minimum inter-tree distance (MITD), and specified the requirement for including a crop tree to brush ratio within a radius of one metre of the trunk of the crop tree.

1994 Silviculture Practices Regulation in effect February 7, 1994

The 1994 regulation retained the requirement to specify an MITD between trees but the default of 2 metres was removed. This regulation introduced the requirement to specify a minimum height for the crop tree and also required that a minimum number of the "preferred species" be specified in the prescription.

Implications of legislation

To correctly apply the legislation to a prescription, it is necessary to consider the time frame in which the "prescription" was approved.

Period 1 - December 17, 1987 to April 8, 1988.

During this period the holder of a major licence is required to meet the obligations of the pre-harvest silviculture prescription as well as any additional obligations specifically stated in the Amendment Act.

It must be noted that while the 1993 Amendment Act validates the prescription and its contents, it does not obligate the holder to achieve the additional content requirements of a prescription outlined in the 1988 Silviculture Regulation.

To meet the obligations of the Act, the holder of the licence had to carry out basic silviculture to establish a free growing crop. A "free growing crop" was defined as "a crop of healthy trees, the growth of which is not impeded by competition from plants, shrubs or other trees".

At this time an MITD of 2 metres was not specified in legislation. While an MITD of 2 metres was commonly used during this time period and provides a reasonable basis for evaluating prescriptions, District Managers should consider any local operating procedures that were in place at the time the SP was prepared.

The obligation associated with establishing a crop of trees that is not impeded by competition will be discussed in detail in the section on vegetation management.

Period 2 - April 8, 1988 to February 7, 1994*

During this period, the holder of a major licence is required to meet the obligations of the 1988 regulation as well as the prescription and Act.

The content requirements of the prescription were much more detailed. The Act directed the district manager not to approve a prescription unless the prescription complied with the regulations and was adequate to carry out basic silviculture. However, if a prescription was approved with some of the "mandatory" content requirements omitted, the omitted requirements cannot be enforced unless they are also required to meet an obligation specified in the Act or regulations. The specific case of vegetation management, where a crop tree to brush ratio was omitted, will be discussed in the section on vegetation management.

The regulation added specific content requirements for the prescription but it did not add a significant number of obligations that were independent of the prescription. However, MITD had to be stated in the prescription only if it was "other than 2 metres".

During this period, the SP was required to state preferred and acceptable species, however, the requirement to specify, "the minimum number of healthy well spaced trees of the preferred species per hectare", was not required until the 1994 silviculture regulation. Prescriptions prepared in this period may allow minimum stocking levels with higher levels of "acceptable" crop trees than would be allowed in later prescriptions.

**The 1994 Silviculture Practices Regulation came into effect on this date.*

Period 3 - Feb. 7, 1994 to June 15, 1995**

As with the other periods, the holder of a major licence is required to meet the obligations of the "prescription" as well as any additional obligations specifically stated in the Act or regulation.

The 1994 Silviculture Regulation added the prescription requirement to state a minimum height for a crop tree before it could be considered free growing. The requirement to state an MITD was maintained as an SP requirement, however, the 2 metre "default" was removed.

***This period is referred to as the post 1994 Silviculture Regulation period.*

Requirements Related to Vegetation Management

Clarification on vegetation management obligations is commonly requested for prescriptions prepared in Period 1 or in the early phase of Period 2.

Period 1 - An acceptable crop tree to brush ratio was not a prescription requirement.

Period 2 - There was an obligation to state the size of the crop trees compared to competing brush within a radius of one metre of the tree. However, the early prescription form did not provide space specifically for this requirement and the prescription was commonly approved without this information.

In both of the situations noted above, the licence holder is obligated to establish a free growing crop that is not impeded by competition because the definition of "free growing crop" provided in the Act required that the crop not be "impeded by competition from plants, shrubs or other trees". The current standard for evaluating "impeding" vegetation provides a reasonable basis for assessing competition. However, as with all guidelines, this guideline may not apply in all cases. The District Manager should consider site specific alternatives as well as the professional opinion of the forester representing the licence holder.

Under current policy there is a requirement for waiting two or three years after a brushing treatment before the area can be declared free growing. The validity of this policy has been questioned for early prescriptions where such guidelines were not "common knowledge" at the time the prescription was approved.

The required waiting period of two or three years was implemented to ensure that the crop trees were truly healthy and free from competing vegetation. However, if the district manager is confident that subsequent to a brushing treatment, the crop trees will remain free from impeding vegetation and that the trees are healthy (not suffering from a side effect of the brushing treatment) a free growing survey could be accepted prior to the "standard" waiting period.

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