

Forestry Legislation and Greenhouse Gas

ON MAY 21, 2008, THE LEGISLATURE BURIED ITS MOST RECENT amendments to the *Forest Act* into a piece of legislation called the *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act*, 2008 (Bill 31). There are essentially two distinct components of Bill 31: one that enacts standards and controls under the *Environmental Management Act* for greenhouse gas emissions; and a second component that enacts amendments to the *Forest Act* (some that are intended to encourage the production of bio-fuel).

While I am sure that government would point out that bio-fuel is carbon-neutral, that the decay of unconsumed wood waste will release CO² in any event, and that the use of bio-fuel does therefore reduce greenhouse gas emissions if substituted for fossil fuels, these two components of Bill 31 really have no earthly connection whatsoever. One is left to speculate as to why government chose to mix-up a significant package of amendments to the *Forest Act* with completely unrelated legislation, and introduce it into the Legislature through the Minister of Environment.

The website for the Ministry of Forests and Range does not even include a news release for Bill 31. What makes this so curious is that Bill 31 does make substantive amendments to the *Forest Act* that do have implications beyond the use of wood waste as bio-fuel. Bill 31 authorizes an "allowable annual cut partition" of the AAC determined for a TSA or TFL on the basis of different timber types, terrains or areas. The Chief Forester is then authorized to make a partition order to limit the amounts harvested under forest licenses or TFLs from given partitions. Bill 31 also provides Cabinet and the minister, respectively, with the discretion to make exemptions to partition orders, or to waive their application.

Another amendment implements a new approach towards waste billings under the *Forest Act*. Under the existing section 103.1 of the *Forest Act*, waste billings are simply governed under the forest tenure at issue. Once section 31 of Bill 31 is brought into force, Cabinet will have the authority under 103.1 to create regulations that govern the payment of waste assessments. These regulations will supersede the requirements of any tenure agreement. Hopefully, these regulations will provide that if government is able to sell any 'wasted' timber (either through one of the new bio-fuel tenures created under Bill 31 or otherwise), then it cannot also bill for waste and thereby achieve a double recovery.

Finally, Bill 31 introduces the concept of a harvest completion notice, and authorizes Cabinet to make regulations in this respect. These regulations may require a licensee to give a written harvest

completion notification to the district manager. They may regulate the timing of notifications, prescribe content requirements (including, but not limited to, declarations regarding a licensee's plans for timber not harvested, and the estimated amounts it does and does not intend to use for commercial purposes), the activities that the licensee has planned for the harvest site, and a description of the licensee's management concerns. The regulations may require that if a licensee declares an intention to use unharvested timber for a commercial purpose then that licensee must, in fact, do so. However, Bill 31 does not contemplate a regulation that would authorize a licensee to amend or resubmit a notification, so Bill 31 may not allow a licensee to change its mind once it submits a notification.

The foregoing is a sampling of the general amendments made to the *Forest Act* in Bill 31. Many more amendments specifically focus on the production of bio-fuel, including the creation of new tenures and the issuance of forest licences for this purpose. Even so, the amendments to the *Forest Act* contained in Bill 31 are much more about the management of Crown timber than they are about greenhouse gas emissions. Their inclusion with completely unrelated legislation in a *Greenhouse Gas Reductions (Emissions Standards) Statutes Amendment Act* has the same appearance as when government attempts to quietly sneak legislation through in a 'Miscellaneous Statutes Amendment Act'. 🌱

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