



CUT CONTROL STATEMENTS: THE CONTRACTOR SCORECARD

In a time of crisis in the sustainability of many contract logging operations in this province, contractors require as much information as possible to efficiently prepare for and perform their ongoing contractual obligations to their licence holders. They need to know what their work commitments will be under their contracts, both short term and long term, to plan their capital expenditures, maintain their cash flow, and finance their operations.

Pursuant to the *Timber Harvesting Contract and Subcontract Regulation* (“the Regulation”), the amount of work entitlement of replaceable Bill 13 contractors must be expressed as a specified percentage of the total amount of timber processed by their licence holders in their licence areas on an annual basis. But work flow in the logging industry is not constant, so the Regulation provides licence holders with the flexibility of “compliance over time” in the allocation of a different amount of work from that specified in the contract for bona fide business and operational reasons. As a result, at any given time during an operating year, or even during a multi-year amount of work compliance period, the contractor does not know whether it has received its full amount of work entitlement, nor how much work it will receive in the future. This makes operational planning very difficult for contractors and verification of their entitlement virtually impossible.

As a part of its administration of the logging operations of licence holders, the Ministry of Forests, Lands, and Natural Resource Operations delivers cut control statements to them pertaining to their harvesting of timber under their licences on a periodic or annual basis. Those statements contain such information as the annual allowable cut of the licence, the adjusted, billed, and unbilled volumes of timber harvested, the overcut from the last period, the total waste volume (of critical importance to a contractor since the higher the average applied to the licence, the lower the amount of work available to the contractor), and

the percentage harvest of the cut control period and total cut control number.

Such information would permit contractors to know where they stand, whether they have received their adjusted amount of work entitlement, and what they must do to prepare for their future operations, including how much work they will receive and what quality of timber it will be.

However, the Ministry and licence holders will not release those cut control

contractor can commence an amount of work dispute and request an arbitrator to compel the disclosure of that information by the licence holder, but that process is expensive and time consuming, and does not assist the contractor in conducting its ongoing operations.

The information contained in the cut control statements is necessary for the Ministry to ensure that licence holders are complying with their obligations under their licences. Similarly, some of

Information in the cut control letters would permit contractors to know where they stand.

statements to the affected contractors because they say those statements contain confidential information regarding the licence holders’ operations, including overcut positions and harvest volumes. Some licence holders also prefer not to disclose how much timber they are harvesting in any given year for proprietary economic and financial reasons.

The *Forest Act* in section 136 prohibits a person employed by the Ministry from releasing or divulging specified timber harvesting, pricing, costing, and sales information without the consent of the reporting licence holders, unless the information cannot be identified with the person who submitted it. Most of that information, other than the volume of timber harvested, is not included in the cut control statements which a contractor requires to verify its receipt of its amount of work entitlement, and to plan for its future work, both financially and operationally.

The contractor has no other means of obtaining the information vitally important to maintaining sustainable operations, and to quantifying and enforcing its amount of work contractual rights. The Regulation sets out how the contractor’s amount of work entitlement is to be determined, but provides no way for the contractor to obtain disclosure of the information necessary to quantify that amount of work entitlement. The

information contained in those statements (such as the licence AAC, adjusted volume, and waste volume) is necessary for contractors to ensure that licence holders are complying with their amount of work obligations under the Regulation and to facilitate the performance by contractors of their obligations under their logging agreements with the licence holders. Contractors cannot negotiate terms in those agreements compelling licence holders to disclose that information because logging agreements are not negotiated between them on a level playing field. The purpose of the Regulation is to level that playing field.

It is in the interests of both parties of long-term replaceable logging agreements to exchange information that reasonably facilitates the pursuit of their mutual goals. If licence holders will not voluntarily disclose to contractors, on a confidential basis, the timber harvesting information that contractors reasonably require to quantify their amount of work entitlement and to perform their obligations in a sustainable manner, then they should be compelled to do so by an appropriate amendment to the *Forest Act* and addition to the Regulation.▲

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