


PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

215

, Approved and Ordered

MAR 30 2006



~~Lieutenant Governor~~
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the ~~Lieutenant Governor~~^{Administrator}, by and with the advice and consent of the Executive Council, orders that the Wildfire Regulation, B.C. Reg. 38/2005, is amended as set out in the attached Schedule.



Minister of Forests and Range and
Minister Responsible for Housing



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Wildfire Act, Part 7

Other (specify):- oic 94/2005

February 20, 2006

26 /2006/11

SCHEDULE

1 Section 1 of the Wildfire Regulation, B.C. Reg. 38/2005, is amended

(a) in subsection (1) by adding the following definitions

“drought code value” means the value of the drought code determined in accordance with the Canadian Forest Service’s publication, the Canadian Forest Fire Weather Index System, as amended from time to time;

“duff moisture code value” means the value of the duff moisture code determined in accordance with the Canadian Forest Service’s publication, the Canadian Forest Fire Weather Index System, as amended from time to time;

“fine fuel moisture code value” means the value of the fine fuel moisture code determined in accordance with the Canadian Forest Service’s publication, the Canadian Forest Fire Weather Index System, as amended from time to time;

“fire fighting hand tools” includes shovels, axes, pulaskis, hand tank pumps and fire extinguishers; ,

(b) in subsection (1) by repealing the definition of “fire suppression system” and substituting the following:

“fire suppression system” means a system for suppressing fire by delivering water, a suppressant or a surfactant; ,

(c) in subsection (1) by repealing the definitions of “harvest” and “sufficient fire fighting tools”,

(d) in subsection (1) by repealing the definition of “high risk activity” and substituting the following:

“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;
- (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; ,

(e) in subsection (1) by adding the following definition:

“workers” does not include individuals working

- (a) at a non-portable timber processing facility,
- (b) on a tug or barge, or
- (c) in a clerical or administrative capacity. ,

(f) in subsection (2) by repealing the definition of “site of an industrial activity”,

(g) in subsection (3) (f) by striking out “as defined under section 1 (1) of the Forest Planning and Practices Regulation, B.C. Reg. 14/2004;”, and

(h) by adding the following subsection:

- (5) For the purposes of sections 5, 6 and 8, there is a risk of a fire starting or spreading on an area only when the area is snow free and the daily
 - (a) fine fuel moisture code value exceeds 75,
 - (b) duff moisture code value exceeds 6, or
 - (c) drought code value exceeds 15.

2 Sections 5 and 6 are repealed and the following substituted:

Sufficient fire fighting hand tools for an industrial activity

- 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.

High risk activities

- 6 (1) In this section, “**fire season**”, in relation to an area, means the period
 - (a) beginning on
 - (i) the third day after the area is snow free, or
 - (ii) in areas where snow cover is often absent, the third consecutive day that the temperature at noon is at least 12 degrees, and
 - (b) ending on whichever occurs first
 - (i) the first day after October 1 on which each of the following is present:
 - (A) the daily fine fuel moisture code value is 75 or less;

- (B) the daily duff moisture code value is 6 or less;
 - (C) the drought code value is 15 or less, or
 - (ii) noon of the first day on which the area becomes snow covered.
- (2) A person who carries out a high risk activity on or within 300 m of forest land or grass land during a fire season must determine the Fire Danger Class for the location of the activity
- (a) by reference to representative weather data for the area,
 - (b) by reference to
 - (i) the Danger Region from Schedule 1,
 - (ii) the applicable numerical rating under the Buildup Index, and
 - (iii) the applicable numerical rating under the Fire Weather Index, and
 - (c) by cross-referencing the Buildup Index with the Fire Weather Index, for the applicable Danger Region, under Schedule 2.
- (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.
- (4) A person who, in accordance with subsection (3) (a) and Schedule 3, is required to maintain a fire watcher, must ensure that the fire watcher
- (a) can reasonably see the site of the high risk activity during the time the fire watcher is required,
 - (b) has at least one fire fighting hand tool,
 - (c) actively watches and patrols for sparks and fires on the site of the high risk activity,
 - (d) immediately carries out fire control and extinguishes the fire, if practicable, and
 - (e) has the means on site to report the fire.

3 Section 8 is amended by striking out everything before paragraph (c) and substituting the following:

- A person must not operate an engine, other than an engine used in a railway operation,
- (a) on forest land or grass land or within 300 m of forest land or grass land, and
 - (b) at a time when there is a risk of a fire starting or spreading,
- unless .

4 *Section 9 is amended by striking out everything before paragraph (a) and substituting the following:*

A person carrying out a railway operation, on or within 300 m of forest land or grass land, must .

5 *Section 13 is repealed and the following substituted:*

Resources required for fire control activities

- 13** (1) A person carrying out an industrial activity who is required by section 6 (3) of the Act to carry out fire control for a fire started other than in the prescribed circumstances referred to in section 6 (1) of the Act, to which fire that provision applies, must make available to fight the fire
- (a) if it started on Crown land, all of the person's
 - (i) workers who are working within 30 km by road of the site of the industrial activity,
 - (ii) fire suppression systems located within 30 km by road of the site of the industrial activity, and
 - (iii) heavy equipment located within 30 km by road of the site of the industrial activity,
 - (b) if it started on land other than Crown land, all of the person's
 - (i) workers who are working on the land on which the fire started,
 - (ii) fire suppression systems located on that land, and
 - (iii) heavy equipment located on that land, and
 - (c) fire fighting hand tools, in a combination and type to equip all of the workers referred to in paragraph (a) (i) or (b) (i) with a minimum of one fire fighting hand tool.
- (2) The person who, under subsection (1), is required to make workers, fire suppression systems, heavy equipment and fire fighting hand tools available must deploy them as appropriate, given the circumstances and conditions applicable to the fire.
- (3) A person carrying out an industrial activity is exempt from section 6 (3) of the Act in respect of a fire that starts at or within 1 km of the site of the industrial activity if the site is
- (a) in a protected area, or
 - (b) on private land that is not owned by the person or another who acts on the person's behalf or under the person's direction.

6 *Section 14 (c) (ii) is repealed and the following substituted:*

- (ii) if the minister is satisfied that the person to be paid is
 - (A) an individual who, immediately before carrying out the compensable fire control on behalf of a person carrying on the applicable industrial activity, was paid at a greater rate of remuneration than that set out in Schedule 4, or

(B) a person who, immediately before carrying out the compensable fire control, was carrying on the applicable industrial activity and who carried out the compensable fire control through employees or others acting at the person's direction and was paying the employees or others at a greater rate than that set out in Schedule 4,

at rates agreed to between the minister and the person, or .

7 ***Section 20 (1) (d) is amended by striking out “sufficient fire fighting tools” and substituting “at least one fire fighting hand tool”.***

8 ***Section 21 is amended***

(a) in subsection (1) by repealing paragraph (d) (iii) and substituting the following:

(iii) the fire is watched and patrolled by a person to prevent the escape of fire and the person is equipped with at least one fire fighting hand tool; ,

(b) by repealing subsections (2) and (3) and substituting the following:

- (2) Without limiting subsection (1), a person who lights, fuels or uses a category 2 open fire in the circumstances set out in subsection (1) must ensure that the fire does not escape.
- (3) If a category 2 open fire, lit, fueled or used in the circumstances set out in subsection (1), spreads beyond the burn area or otherwise becomes out of control, the person who lit, fueled or used the open fire must
 - (a) carry out fire control immediately,
 - (b) extinguish the fire if practicable, and
 - (c) as soon as practicable, report the fire as described in section 2 of the Act. ,
and

(c) by adding the following:

- (5) A person carrying on an industrial activity who is required under subsection (3) to carry out fire control in respect of a category 2 open fire must make available to fight the fire at least the greater of
 - (a) one piece of heavy equipment, one fire suppression system and 6 workers who are each equipped with at least one fire fighting hand tool, and
 - (b) the workers, fire suppression systems, heavy equipment and fire fighting hand tools as described in section 13 (1) in relation to whichever is applicable, Crown land or land other than Crown land.
- (6) The person who, under subsection (5), is required to make workers, fire suppression systems, heavy equipment and fire fighting hand tools available must deploy them as appropriate, given the circumstances and conditions applicable to the fire.

9 Section 22 is amended

(a) in subsection (1) by repealing paragraph (f) (iii) and substituting the following:

- (iii) the fire is watched and patrolled by a person to prevent the escape of fire and the person is equipped with at least one fire fighting hand tool, and,

(b) by repealing subsections (2) and (4) and substituting the following:

- (2) A person who, in the circumstances set out in subsection (1), lights, fuels or uses a category 3 open fire on a burn area must ensure that
 - (a) no windrow on the burn area exceeds 200 m in length or 15 m in width, and
 - (b) the category 3 open fire is extinguished by the date specified by the official or person who issued the burn registration number.
- (4) If a category 3 open fire lit, fuelled or used in the circumstances set out in subsection (1) spreads beyond the burn area or otherwise becomes out of control, the person who lit, fueled or used the open fire must
 - (a) carry out fire control immediately,
 - (b) extinguish the fire if practicable, and
 - (c) as soon as practicable, report the fire as described in section 2 of the Act. ,
and

(c) by adding the following:

- (6) A person carrying on an industrial activity who is required under subsection (4) to carry out fire control in respect of a category 3 open fire must make available to fight the fire at least the greater of
 - (a) 2 pieces of heavy equipment, 2 fire suppression systems and 11 workers who are each equipped with at least one fire fighting hand tool, and
 - (b) the workers, fire suppression systems, heavy equipment and fire fighting hand tools as described in section 13 (1) in relation to whichever is applicable, Crown land or land other than Crown land.
- (7) The person who, under subsection (6), is required to make workers, fire suppression systems, heavy equipment and fire fighting hand tools available must deploy them as appropriate, given the circumstances and conditions applicable to the fire.

10 Section 24 (1) (b) is repealed and the following substituted:

- (b) the whereabouts of the parcel of land that contains the proposed burn area, including a legal description of the parcel if available; .

11 Section 25 is repealed and the following substituted:

Exemptions from certain regulations

- 25** (1) An official's authority under section 72 (3) of the Act to exempt a person from a provision of a regulation made under section 72 (2) of the Act is restricted as follows:
- (a) the official must not grant the exemption unless satisfied that compliance by the person with that provision is not practicable in the applicable circumstances;
 - (b) the official must be satisfied that any
 - (i) conditions, or
 - (ii) alternative requirementsspecified under section 72 (3) of the Act are appropriate having regard to the subject matter of that provision and the applicable circumstances.
- (2) A person exempted under this section by an exemption made subject to conditions or to alternative requirements must comply with the conditions or alternative requirements.

12 *Section 29 is repealed and the following substituted:*

Circumstances for not seeking cost recovery

- 29** The circumstances in which the minister, under section 25 (2) or 27 (1) (d) of the Act, may not by order require a person to pay to the government the government's fire control costs determined under section 25 (1) (a) or 27 (1) (b) of the Act are that the person, through their acts or omissions, did not willfully cause or contribute to the start or spread of the fire, and
- (a) before the government has carried out fire control for the fire that gives rise to the government's costs,
 - (i) the person has entered into a cost sharing agreement or a service agreement with the government,
 - (ii) the agreement is in effect at the time of the fire, and
 - (iii) any failure of the person to act in accordance with the agreement did not directly or indirectly cause or contribute to the start or spread of the fire, or
 - (b) the fire that gives rise to the government's costs results from timber harvesting, silviculture treatments, road construction, road maintenance or road deactivation by a person who
 - (i) is the holder of an agreement or licence under the *Forest Act*, and
 - (ii) as of the date of the fire, is not in arrears for the annual rent payable for the agreement or licence under the Annual Rent Regulation, B.C. Reg. 122/2003.

13 *Sections 33 and 34 are repealed and the following substituted:*

Administrative penalties

- 33** (1) The maximum amount of an administrative penalty that may be levied under section 27 (1) (a) of the Act for contraventions of this regulation is
- (a) \$100 000 for the contravention of section 6 (2), (3) or (4), 9, 13 (1), 19 (2) or (3), 20 (2) or (3), 21 (2), (3), (5) or (6), 22 (3), (4), (6) or (7), 23 (3) or (4), 25 (2) or 26 (3), and
 - (b) \$10 000 for the contravention of section 4, 5, 7, 8, 11 (4), 16, 22 (2) or 23 (2).
- (2) The maximum amount of an administrative penalty that may be levied under section 27 (1) (a) of the Act for contraventions of the Act is
- (a) \$100 000 for the contravention of section 6 (1), (2) (a) or (b) or (3), 7 (2) or (4), 22 (1) or 56 (2), and
 - (b) \$10 000 for the contravention of section 2, 3 (1) or (2) (a) or (b), 5 (1) or (2) (a) or (b), 10 (3) or (4), 11 (2), 12 (2) (a) or (b), 13 (2) or 16 (2).

Offences

- 34** (1) A person who contravenes section 6 (2), (3) or (4), 9, 10, 12 (2), 13 (1), 19 (2) or (3), 20 (2) or (3), 21 (2), (3), (5) or (6), 22 (3), (4), (6) or (7), 23 (3) or (4), 25 (2) or 26 (3) commits an offence and is liable on conviction to a fine not exceeding \$100 000 or to imprisonment for not more than one year or to both.
- (2) A person who contravenes section 4, 5, 7, 11 (4), 16, 22 (2), 23 (2) or 24 (3) commits an offence and is liable on conviction to a fine not exceeding \$10 000.